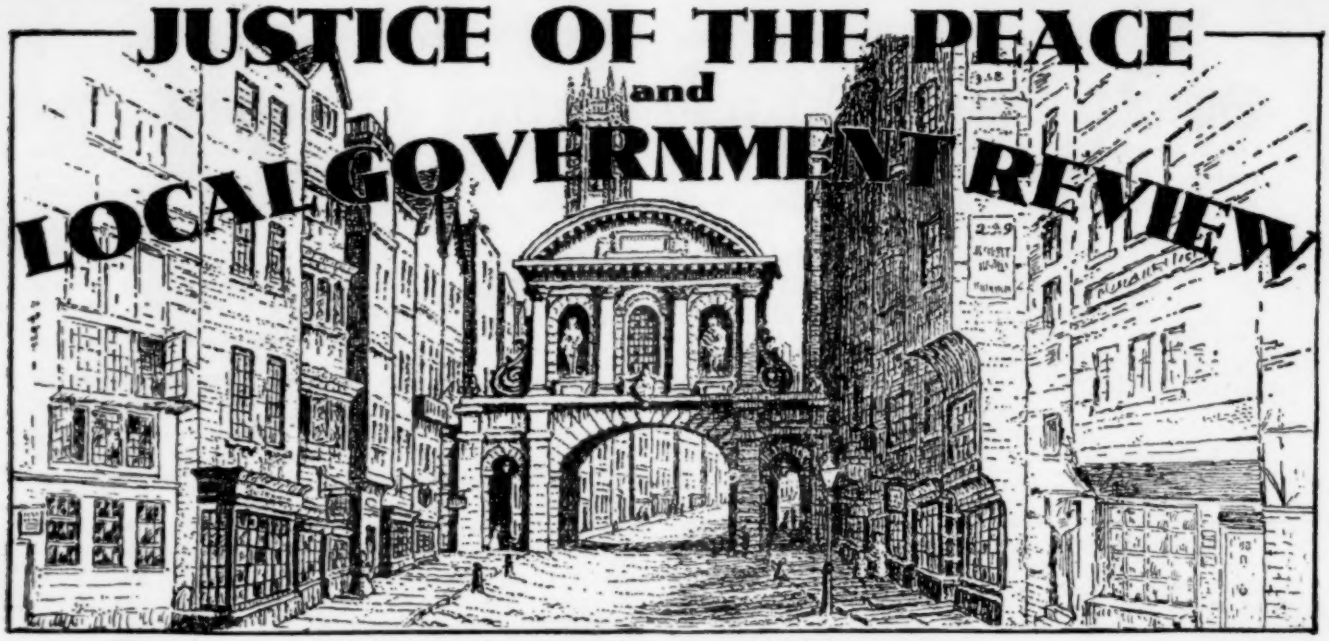
JUSTICE OF THE PEACE and LOCAL GOVERNMENT REVIEW



VOL. CXVIII LONDON: SATURDAY, MARCH 6, 1954 No. 10

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REPORTS

Official & Classified Advertisements, etc.

Official Advertisements (Appointments, Tenders, etc.), 2s. per line and 3s. per displayed headline. Classified Advertisements, 24 words 6s. (each additional line 1s. 6d.) Box Number, 1s. extra *Latest time for receipt* **10** *a.m. Thursday*

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NOTIFICATION OF VACANCIES ORDER, 1952

The engagement of persons answering these advertisements must be made through a Local Office of the Ministry of Labour or a Scheduled Employment Agency if the applicant is a man aged 18-64 or a woman aged 18-59 inclusive unless he or she, or the employment, is excepted from the provisions of the Notification of Vacancies Order, 1952. *Note :* Barristers, Solicitors, Local Government Officers, who are engaged in a professional, administrative or executive capacity, Police Officers and Social Workers are excepted from the provisions of the Order.

SITUATIONS VACANT

LINCOLNSHIRE. Assistant Clerk to Justices Clerk required, part time on Justices work and remainder on general work in Solicitor's Office. Salary on General Division Scale. Box A15, Office of this Newspaper.

EAST HERTS. Conveyancing Assistant able to work with little or no supervision. Assistance with accommodation if desired. State age, experience and salary required.—Write Box A.16 Office of this Newspaper.

LONDON Magistrates' Courts Committee invite applications for the post of General Clerk (Male) at the Hampstead Magistrates' Court. Previous experience in Justices' Clerk's office not necessary but shorthand and typewriting is essential. Salary £416 per annum. Appointment superannuable and subject to medical examination. Written application, with copies of two testimonials, to W. EWART PRICE, Clerk to the Justices, Magistrates' Court, Downshire Hill, Hampstead, London, N.W.3.

SCARBOROUGH CORPORATION require Assistant Solicitor (Grades A.P.T. Va—VII according to experience). Subject to medical examination for superannuation purposes. Applications with copies of two recent testimonials to Town Clerk, Town Hall, Scarborough, by March 13, 1954.

INQUIRIES

YORKSHIRE DETECTIVE BUREAU (T. E. Hoyland, Ex-Detective Sergeant). Member of The Association of British Detectives, World Secret Service Association and Associated American Detective Agencies. DIVORCE — OBSERVATIONS — ENQUIRIES—Civil and Criminal investigations anywhere. Over 1,000 Agents. Over 27 years C.I.D. and Private Detective Experience at your Service. Empire House, 10, Piccadilly, Bradford. Tel. 25129. (After office hours, 26823.) Established 1945.

PARKINSON & CO., East Boldon, Co. Durham. Private and Commercial Investigators. Instructions accepted from Solicitors only. Tel.: Boldon 7301. Available day and night.

SITUATIONS VACANT (*contd.*)

KENT PROBATION COMMITTEE requires Male Probation Officer. Salary and appointment in accordance with Probation Rules, 1949-52. Applicants must be not less than twenty-three nor more than forty years of age. Post superannuable. Medical examination. Applications, stating age, qualifications and experience, with copies of not more than three testimonials, to Deputy Clerk of the Peace, County Hall, Maidstone, by March 20, 1954.

FROME AND KILMERSDON PETTY SESSIONAL DIVISIONS

APPLICATIONS are invited from young men who have completed their national service for the post of Second Assistant to the Clerk to the Justices of the above Divisions.

Previous magisterial experience is not essential but applicants must be able to type, and a knowledge of shorthand and book-keeping would be of advantage.

Salary in accordance with the General Division of the National Joint Council Scales (maximum £450 at age 30) pending agreement of separate Scales for Justices' Clerk's Assistants. The appointment will be superannuable and subject to medical examination.

Applications, stating age and experience, and with the names of two referees, should be sent to M. C. Cruttwell, Clerk to the Justices, Frome, Somerset.

COUNTY BOROUGH OF EAST HAM

Magistrates' Courts Committee

Appointment of Justice's Clerk

APPLICATIONS are invited from persons qualified in accordance with the Justice of the Peace Act, 1949, for appointment as whole-time Clerk to the Justices.

Candidates should have had considerable experience in all branches of the work of Magistrates' Courts, including the keeping of accounts.

Salary £1,600×£50—£1,850.

Subject to the approval of the Home Secretary, the holder of the office will act as Secretary to the Licensing Planning Committee, for which an additional salary of £150 per annum is payable at present.

Forms of application (returnable March 27, 1954) from the Chairman of the Magistrates' Courts Committee, Town Hall, East Ham, E.6.

ESSEX MAGISTRATES' COURTS COMMITTEE

APPLICATIONS are invited for the appointment of Assistant to the Clerk to the Justices for the Borough of Colchester and the Petty Sessional Division of Lexden and Winstree. Applicants should possess considerable experience of the work of a Justices' Clerk's office and be capable of taking Courts without supervision. Preference will be given to a candidate who is a competent shorthand typist.

The salary will be between £580 and £625, according to experience.

The appointment is superannuable and the person appointed will be required to pass a medical examination.

Applications, stating age, qualifications and experience, together with the names of two referees, should reach the undersigned not later than fourteen days after the appearance of this advertisement.

W. J. PIPER,
Clerk of the Essex Magistrates' Courts Committee.

Office of the Clerk of the Peace,
Tindal Square,
Chelmsford.

COUNTY OF ESSEX

APPLICATIONS are invited for the office of Clerk of the County Council at a salary of £4,000 a year, rising by three increments, one of £100 and two of £200, to £4,500 a year. Candidates must be solicitors or barristers with extensive local government and legal experience and possess sound administrative and organizing ability.

Particulars of the terms and conditions of appointment may be obtained by prospective candidates from the undersigned. Applications for the appointment must be received by me not later than April 3, 1954. Canvassing, directly or indirectly, will be a disqualification.

JOHN E. LIGHTBURN,
Clerk of the County Council.

County Hall,
Chelmsford.
March 3, 1954.

CORNWALL COMBINED PROBATION AREA

Appointment of Female Probation Officer

APPLICATIONS are invited for the appointment of a full-time Female Probation Officer for the Eastern Area of the County of Cornwall.

The appointment will be subject to the Probation Rules, 1949-52, and the salary will be paid in accordance with these Rules. The salary will be subject to superannuation deductions and the selected candidate will be required to pass a medical examination. The Officer will be required to provide a motor-car and an allowance will be paid in accordance with the scale adopted by the Probation Committee for the Combined Area.

Applications, stating age, qualifications and experience, and the names of three referees, must reach the undersigned not later than the first post March 22, 1954.

Envelopes should be endorsed "Female Probation Officer." Canvassing, directly or indirectly, will disqualify.

E. T. VERGER,
Clerk of the Cornwall Combined Probation Area Committee.

Justice of the Peace
and
Local Government Review

[ESTABLISHED 1837.]

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NOTES of the WEEK

Proof of Previous Conviction

A sensible and convenient practice adopted by many courts to get over a difficulty was regularized by the provisions of s. 25 (4) of the Magistrates' Courts Act, 1952, and r. 23 of the Magistrates' Courts Rules. Whether a defendant has the right to claim trial by jury sometimes depends on whether he has been previously convicted of a like offence, and since it is undesirable that the court should become aware that a person whom it is trying has been previously convicted, the question about choice of trial is put to him in conditional form : if he has the right, does he wish to claim trial by jury ? If he replies that he does not, the court will not be informed, if he has a record, until after conviction.

That should work satisfactorily, but there is one point to be watched. Before committing for trial a defendant who has claimed trial by jury, the court must make sure that he has the right. It has been known for a case to be committed on the ground that there was a previous conviction, which the defendant admitted, when, as transpired subsequently, the conviction was not such as to count for the purpose of an increased maximum punishment on a second conviction. A conviction resulting in probation, or absolute or conditional discharge, is not to be considered as a previous conviction for such a purpose, by reason of s. 12 (1) of the Criminal Justice Act, 1948. In such a case the defendant is not entitled to claim trial by jury, and the magistrates' court is not authorized to commit him for trial.

The only safe course, where there is a question of jurisdiction, or of an enhanced penalty on a second or subsequent conviction, is for the magistrates' court to insist on the production of the proper documentary proof of the conviction, so as to see exactly what the offence was and what was the adjudication. The admission of the defendant is not sufficiently reliable, except on the question of identity.

Toy Cars in Court

Carlisle County Magistrates' Court may not be one of the busiest of magistrates' courts, but it is certainly not behind the times. Some years ago microphones were installed for witnesses, and the court has also been using model cars in connexion with road traffic cases. Now a further improvement has been introduced. Instead of having the cars and plan placed on a table as formerly, a blackboard had been brought into use, easily visible from the bench and from the places allotted to solicitors and counsel. The blackboard is of steel, and a well-known brand of miniature cars, fitted with magnets underneath, can be placed on the blackboard in an upright position, where they will stay put. The blackboard is ruled to scale corresponding with the scale of the cars.

This will without doubt prove a great advantage over the kind of procedure that often takes place in magistrates' courts. We all know what confusion can arise when a plan is put in and witnesses are asked to mark various positions on it with a cross to indicate where the witness says the vehicles concerned were at different stages. By the time several witnesses have had a try, the plan is littered with crosses, and no one is quite clear who made which, while sometimes it appears that one car must have been in the saloon bar of the public-house at the corner, another witness having made it impossible that the two cars could have been in collision. Sometimes, to add further complications, the defendant or his advocate draws his own plan on a sheet of blotting-paper, in red pencil, and asks the prosecution to accept it for the purposes of the cross-examination, disregarding such trifling matters as measurements and scale. Finally, the court may be driven in desperation to set aside all the plans and diagrams and attempt to picture the scene and arrive at the facts from the spoken word alone.

The Carlisle method has the merit of being truly pictorial, and should enable witnesses to appreciate what they are asked to do about indicating positions of vehicles on the plan of the roads, and it must make it much easier for members of the bench and others concerned to follow the evidence than when a plan has to be handed from one to another with various explanations and comments. Everyone can see at once, and under the best conditions.

We apprehend that many a magistrate will quite enjoy this little game of motor-cars, for we may as well admit frankly that most of us like the mechanical or model type of toy. We remember the man who asked the shop-assistant for a mechanical toy suitable for a small boy with a father aged forty ; and many an older man may find it all the easier, as well as jollier, to keep his attention fixed on the case when it is illustrated by the manœuvres of the attractive little toys that his children or grandchildren have demonstrated to him out of court.

The Home Secretary on Crime

Crime stories and crime plays are often fascinating, because they set the reader or the audience a problem which they try to solve while it is being worked out. There is besides a certain excitement about most of them that adds to the enjoyment. That is all quite good entertainment, so long as crime is not made to appear romantic and justifiable, and so long as a villain is not turned into a hero and held up for admiration. Few criminals deserve admiration. Many are heartless, as well as lazy and brutal. It is one thing to portray a criminal with some redeeming traits of character, but quite another to glorify a life of crime and to picture the criminal as a warm-hearted gentleman whom society misjudges.

Sir David Maxwell Fyfe, in a recent speech, said truly that much crime is nasty, brutish and despicable. Like others, he laments the changed standards of what he called " this mad century," and finds no quick or easy solution.

To recognize and stigmatize a crime for what it is, as the Home Secretary has done, is the first step in dealing with it. In some instances the courts are not always beyond criticism in this matter. Even when the offence can properly be dealt with leniently, it may be necessary to underline the gravity of its nature and to make the offender realize that it was " nasty, brutish or despicable." We have sometimes thought that not all juvenile courts are sufficiently alive to this. If a youngster has been guilty of a mean theft, or a brutal piece of cruelty, or an exceptionally unpleasant act of indecency, it seems inappropriate to ask him how he came to be so foolish or to make such a mistake. Some magistrates do use language to be clearly understood, and ask how the offender would like it if someone did such a shabby, dirty trick upon him, or what he would do if someone behaved like that to his sister. That is unnecessary if the offender is already heartily ashamed of himself, but unfortunately many young people show no signs of this and see no harm in doing just what they wish, regardless of others. These need plain speaking first, and help afterwards. Crime, even much of the juvenile crime, calls for plain speaking.

Sentence on Expectant Mother

When, at the Central Criminal Court, a woman was convicted of murder, learned counsel for the prosecution said there was a further issue for the jury to try, namely, whether the prisoner was pregnant. He proceeded to call medical evidence upon which the jury found that the woman was pregnant, and the learned judge sentenced her to imprisonment for life.

Under the provisions of the Sentence of Death (Expectant Mothers) Act, 1931, a woman convicted of a capital offence is to be so sentenced in lieu of being sentenced to death if the jury find her to be pregnant. The fact of pregnancy may be proved, and must be proved conclusively, either by the Crown or by the defence. The question may be raised by the court. Formerly, it was for the defence to plead pregnancy, and a jury of twelve matrons was impanelled for the purpose of trying that issue. Now, it is put to the jury who have already tried the issue of guilt.

A Pre-Licence Hostel

One of the problems confronting those in charge of institutions from which inmates may be released on licence is how to prepare them for complete liberty after a long period during which they have been under control, with little or no responsibility, and with everything provided and arranged for them. Boys leaving borstal institutions or approved schools are sometimes half afraid of going out into a world in which they will no longer be constantly in a position to receive help and guidance. Various methods have been adopted of bridging the gap between the two kinds of life, one of these being residence in some kind of hostel.

There is an impressive account in *The Approved Schools Gazette* of an experiment in running a pre-licence hostel by Mr. Graham Lucas, headmaster of Ty Mawr School. Attention had been focused on one particular group of failures, those who within the school were model pupils, but once away from its support, collapsed immediately and completely. This was considered as due to the sudden change. In planning some measure to deal with this, care had to be taken to avoid any deleterious effect on the other inmates of the school, who were subject to firm control and reasonable discipline.

Three disused Nissen huts were made habitable, two being used by four boys to each and the third by a member of the staff who had volunteered to act as warden. The warden's function was to act the part of a father rather than that of a master, to be ready to be consulted but to exercise a measure of control and supervision unobtrusively. There was no regular routine, the attempt being to approximate to family life ; but the boys were not cut off from the school, which they could visit in the evening for the purpose of joining in the activities of various clubs. Activities in the hostel were encouraged and leave to go out was freely granted, with the ordinary injunction not to be back too late, such as a parent might give.

If a boy failed to show that he could maintain a proper standard of conduct under conditions of so much liberty, then, he was not fit for licensing, and was returned to the main school.

It was thought desirable that amenities should not be overdone, but that the standards of comfort in the hostel should be approximate to the working class home, to which in most cases the boys will be licensed. We commend the following as sensible and realistic : " Some critics were dismayed because there was no hot water laid on, because there was no central heating, because they had to go outside to reach the lavatories, because they had to put up and check their own dirty linen for laundry and fetch the clean, because they were left to their own resources to do minor repairs such as the sewing on of buttons, and the darning of an occasional hole in a stocking. All these things were as we had intended they should be. We wanted the boy to learn to think for himself, to realise that he could not rely upon other people to do everything for him. If he was cold in the evening the obvious thing to do was to light a fire ; if there was no coal he would have to fetch it ; if it was wood he needed he knew where to find a chopper, and the rest was up to him—and so on."

Mr. Lucas does not claim to be a pioneer. Other schools and institutions have worked on similar lines. His is a straightforward, modest account of an experiment which aftercare results seem to have justified, and which may well lead to something on a more permanent basis, given such accommodation as will enable a hostel to be managed by a married couple.

Neglect to Maintain Family

It is an offence against s. 51 of the National Assistance Act, 1948, if a person persistently refuses or neglects to maintain himself or any person whom he is liable to maintain, and in consequence of his refusal or neglect assistance is given to or accommodation is provided for, himself or any other person.

A recent case in the High Court of Justiciary, reported in *The Scotsman*, is of interest. The Court quashed the conviction of a man named Corcoran. At the appellant's trial it had been established that Mrs. Corcoran left the family home, taking the children with her. She came to Edinburgh, and for a time resided with her sister. In June, 1949, she applied for assistance under the National Assistance Act, and this was granted. When written to by the National Assistance Board, the appellant replied that by paying his wife assistance the Board was, he suggested, helping her to maintain her ridiculous attitude. Throughout the whole period the appellant had maintained the same attitude, *viz.*, " that his wife had deserted him without good cause, and removed the children without his consent, and that he was willing to take her back and maintain her and the children in the family home at Maidstone." The Sheriff-Substitute had found the appellant not guilty of the charge so far as it related to the wife, but guilty so far as it related to the children.

The Appeal Court held the conviction could not be upheld. Lord Sorn, in the course of his judgment observed that there

was nothing in the facts to suggest that it was other than proper for the father to aliment his children by taking them to reside with him in what had been the family home, and it was only the obstinacy of the mother, who had the children under her control, that prevented the father's offer being accepted.

Clearly at that stage the appellant was not persistently refusing or neglecting to maintain his children. That seemed to have been the view adopted by the Sheriff, but he went on to hold that, as time passed, the appellant ceased to be a father who was discharging his obligation and became a father who was not doing so. It was here that he had erred. So long as the father's offer was subsisting, genuine and suitable, he could not, in his Lordship's opinion, be regarded as in breach of his obligation.

The Lord Justice-General who, with Lord Russell, concurred, added some observations on the question of domicil and other matters which might affect any application to some other court for custody of the children. He referred to the special circumstances in this case and said that he wished to guard himself against lending any support to the idea that any deserted husband was entitled to sit idly for years while his children were supported out of public funds.

Police Force Statistics 1952/53

This is the third annual return published by the Institute of Municipal Treasurers and Accountants and the Society of County Treasurers. The return excludes the areas of the Metropolitan Force and the City of London Force: it covers the rest of England and Wales and analyzes the cost of police protection and service for the 35½ m. of population there resident. Police strength authorized at March 31, 1953, was 52,800 (actual average daily strength 48,200): the regulars were assisted by 61,600 special constables and 5,700 civilian staff. The year disclosed a further narrowing of the gap between authorized and actual police strengths.

Total net expenditure on the service chargeable to rates and grants was £43,200,000, equal to £1,200 per 1,000 population and the cost per police officer averaged £895.

In the city and borough forces there is on average one officer for every 569 people: in the county forces one for every 749. Individual forces show considerable variations in these basic averages, reflecting the differing opinions of standing joint committees, watch committees and chief constables as to necessary police strengths. (In some cases chief constables wish to augment numbers shown but have deferred recommendations while vacancies still exist in present establishments.) The analysis of expenditure is expressed as a cost per 1,000 population and therefore in making comparisons these controlling differences must not be overlooked. Nevertheless certain variations in administration are evident from the return: for example, the unit cost of loan charges and capital expenditure charged to revenue is £55 in counties and £26 in cities and boroughs, whereas the figures for rent allowances are £24 in counties and £83 in cities and boroughs. Evidently the county forces have had to spend relatively more than the boroughs on providing police houses.

Because the broad pattern of the police service is one largely prescribed by the central government it does not follow that detailed examination of comparative costs cannot be fruitful, for example, one of the matters signposted by this return is the relationship between civilian and uniformed staff. The necessity to keep expenditure to the lowest reasonable figure and the difference in cost between a policeman and a clerk makes the matter of limiting the force to the number required for police work a subject well worth investigation.

DRIVING WHILE DISQUALIFIED BY AGE

The Interpretation Act, 1889, s. 33, provides as follows: "Where an act or omission constitutes an offence under two or more Acts, or both under an Act and at common law . . . the offender shall, unless the contrary intention appears, be liable to be prosecuted and punished under either or any of these Acts or at common law, but shall not be liable to be punished twice for the same offence." Can this principle be applied when one and the same Act appears to make the same act punishable by virtue of the provisions of two different sections? We say can the principle be applied because we think that s. 33 does not in terms cover the position where the different provisions are in the same Act. "Act" is defined in s. 39 of the 1889 Act as including a local and personal Act and a private Act and we assume, therefore, that it cannot be construed as meaning merely a section of an Act.

The query arises because of the provisions of s. 9 and s. 7 (4) of the Road Traffic Act, 1930.

Let us take s. 7 (4) first. It provides that "if any person who under the provisions of this Part of this Act is disqualified for holding or obtaining a licence applies for or obtains a licence while he is so disqualified, or if any such person while he is so disqualified drives a motor vehicle, or if the disqualification is limited to the driving of a motor vehicle of a particular class or description, a motor vehicle of that class or description, on a road that person shall be liable on summary conviction to imprisonment for a term not exceeding six months or . . . to a fine not exceeding £50 or to both such imprisonment and fine . . ." The words omitted between "or" and "to", although important for other purposes are not relevant to the discussion of this point. The section makes it clear that for a person who is disqualified to drive in defiance of that disqualification is regarded as a serious offence. It seems likely that the offenders aimed at were those who had been formally disqualified either by an order of a court or by virtue of a conviction, but the matter cannot be left there.

Section 9 makes special provision to prevent persons who have not attained certain ages from driving certain types of vehicles. This is covered by subss. 1, 2 and 3. Then comes s. 9 (4) as follows: "Any person who drives, or causes or permits any person to drive a motor vehicle in contravention of this section shall be guilty of an offence". This imports the penalty provided by s. 113 (2) of the Act, *i.e.*, a maximum of £20 for a first offence and, for a second or subsequent offence, a maximum of £50 or imprisonment not exceeding three months.

But s. 9 does not stop there. Section 9 (5) is as follows: "A person prohibited by this section by reason of his age from driving a motor vehicle or a motor vehicle of any class shall for the purposes of this Part of this Act *be deemed to be disqualified* under the provisions of this Part of this Act for holding or obtaining any licence, other than a licence to drive such motor vehicles, if any, as he is not by this section forbidden to drive."

Unless some good reason can be found, s. 9 (5), giving words their normal meaning, makes anyone who drives in contravention of s. 9 (1) (2) or (3) an offender against s. 7 (4). He is to be

treated as a person who is disqualified for driving and he is driving in spite of that disqualification. It seems to us that there can be no argument on the further effect of s. 9 (5), which is that if any person who is disqualified by age applies for or obtains a licence to which he is not entitled he offends against the first part of s. 7 (4). Is there any reason for saying that he so offends, but that if he drives he does not offend against the further part of s. 7 (4)?

We cannot find any ruling to help us in coming to a conclusion on the point, so we look back to s. 33 of the Interpretation Act, 1889. If the provisions of s. 7 (4) and of s. 9 (4) were contained in different Acts the prosecutor would be free to apply for process, in an appropriate case, under either of the two subsections unless it could be shown that a contrary intention appeared somewhere. Applying this principle can it be said that by the enactment of s. 9 (4) the legislature was intending to make it apparent that such offenders should be prosecuted under that subsection and not otherwise? One must assume that Parliament had the provisions of s. 9 (5) in mind. If it was desired to exclude the provisions of s. 7 (4), beyond all doubt the simple way was to add to s. 9 (4) some such words as " but shall not be liable to be proceeded against, by virtue only of the provisions of this section, under the provisions of s. 7 (4) of this Act." This would have left an age-barred driver who had actually been disqualified by a conviction or order of a court still liable to prosecution under s. 7 (4), but would have protected the driver whose " disqualification " depended upon the provisions of s. 9 (5).

On the other hand we must recognize that so far as the driver is concerned the provisions of s. 9 (4) are in a way unnecessary if we take the view that his offence is covered by s. 7 (4). But this is not wholly so, because a person charged under s. 7 (4) has the right to claim to be tried by jury, whereas one charged under s. 9 (4) must be tried summarily. The conclusion to which we come is that it is open to the prosecution to proceed either under s. 7 (4) or under s. 9 (4). Normally they will choose, we imagine, the latter, and will reserve the former for cases of an aggravated nature where it appears that the offence is committed in blatant defiance of the law by someone who may merit the greater punishment for which s. 7 (4) provides.

SEPARATION ORDERS AFTER RE-MARRIAGE

[CONTRIBUTED]

When a wife obtains a divorce it is quite usual for an order to be obtained from the Registrar of the High Court, for her maintenance and the maintenance of the children of the marriage, and on any change of circumstances an application can be made by either party to vary the order. One of these circumstances is re-marriage. The order is obtained under s. 19 of the Matrimonial Causes Act, 1950, which replaces s. 190 of the Supreme Court of Judicature (Consolidation) Act, 1925. It is, however, unusual that a separation order made by the justices in petty sessions should subsist after divorce, and even continue as modified after the re-marriage of the wife.

The facts of *Moore* v. *Napier* [1953] 2 All E.R. 401 were these. The wife had obtained a separation order awarding her £2 a week as maintenance, being £1 10*s*. 0*d*. for herself and 10*s*. for the child of the marriage. Subsequently the wife obtained a divorce on grounds of cruelty and re-married in May, 1952. After re-marriage the husband only continued payment at the rate of 10*s*. a week for the maintenance of the child, and a year later in July, 1953, applied for the variation of the order by revocation so far as the payment to the wife was concerned, on the ground that the wife was no longer in need of maintenance. The justices, however, varied the order by reducing the amount payable under the order from £2 to £1, which left the wife with 10*s*. for herself and 10*s*. for the maintenance of the child.

It was agreed that the wife had never claimed under s. 1 (1) of the Married Women (Maintenance) Act, 1949, in respect of the child when the maximum sums payable for the benefit of wife and child could be increased, but the appellant claimed that the proper procedure was for the wife to take out a cross summons under s. 1 (1) of the Act of 1949, to increase the amount payable to the child whilst reducing the payment to the wife to a nominal sum or getting rid of it altogether. The court considered this too cumbrous a procedure, and would not enter into the question what would happen under the present order when the child became sixteen and the payment under the order ceased. In the words of Lord Merriman, P., " It is not our business to peer into the future."

It is interesting to compare and contrast the provisions of s. 7 of the Summary Jurisdiction (Married Women) Act, 1895, with those contained in ss. 19 and 28 of the Matrimonial Causes Act, 1950. The one governs orders made by the justices in petty sessions assembled, the other by the Registrar of the High Court. The one arises on a separation order which may continue even after re-marriage, the other on an order for maintenance on divorce. The Act of 1895 provides " upon cause being shown upon fresh evidence to the satisfaction of the court at any time " for a variation in the order. It also provides that the order shall be discharged on adultery, except where this was conduced by the failure of the husband to make such payments as he was able to do under the order.

Under s. 19 of the Matrimonial Causes Act, 1950, the court fixes the amount of maintenance "having regard to her fortune, if any, to the ability of her husband (presumably her ex-husband) and to the conduct of the parties." Presumably when an application is received to vary the order under the powers contained in s. 28 of that Act, the Court must similarly have regard to material considerations of that nature. Thus in *Perkins* v. *Perkins* [1938] 3 All E.R. 116, an appeal from the Registrar, the question that arose was how far the new husband was a pecuniary asset. In *Bellenden* v. *Satterthwaite* [1948] 1 All E.R. 343, where there was great disparity in income between the two husbands, the allowance in respect of the wife was reduced but not to a nominal sum. She was saved the necessity of maintaining a separate establishment—a material consideration. The sphere of the justices is perhaps not so limited by the Act. Scope is left to their discretion and so long as the effect of their decision is reasonable the Court does not seem prepared to go into finer points, relating to the division of allowances between wife and child.

Re-marriage does raise various difficult and conflicting considerations. It is usual for at least a nominal allowance to remain in the wife's favour, in case her circumstances alter unfavourably (perhaps by the death of her second husband) and put her in need of increased maintenance. Orders of maintenance in the High Court are normally framed " until further order." Re-marriage does not automatically result in reduction of the wife's allowance to a nominal figure, as the case of *Moore* v. *Napier*, *supra*, shows. In *Bellenden* v. *Satterthwaite* the reduction was only from £500 a year to £350 a year. On the one side there is the generally accepted principle that a man should not be normally called upon to maintain another man's

wife ; on the other hand it is the wife's position that is being considered and not the second husband's. Circumstances might show that the wife's circumstances have deteriorated by re-marriage. Her second husband might be an invalid ; the film star's wife may take as her second husband a poor man. The decision is largely one of fact, and it is not expected that if the justices or the Registrar have applied their minds correctly to the circumstances the High Court will disturb their decision.

The information given above does indicate that the decision in *Moore* v. *Napier* should not be treated as an isolated case, but related to other decisions which have arisen under High Court orders. R.P.C.

THE PLANNING APPEAL

[CONTRIBUTED]

Lord Justice Denning, in an address to the Town Planning Institute on February 4, is reported as having said that often the procedure governing public inquiries and planning disputes did not correspond with the principles of a fair trial as understood in this country. This is sweeping criticism at a time when the public's enthusiasm for town and country planning appears on the wane. Not only the Town and Country Planning Act, 1947, but also the modern conception of town and country planning seems to have come into disfavour or at least distrust by the public generally, whose opinion must in the long run influence policy.

Local planning has been entrusted to local authorities. Their only comparatively serious disadvantage for such a function is that they have become to be elected on political lines. If the members do not stand as members of one or other of the recognized political parties they usually rely upon the help of the organization and support of a party at their election. To this extent they may have bias of the same sort as have central governments, no more and possibly less ; certainly less in some areas still free from party politics. Apart from this, day to day planning is difficult in that it is a matter of opinion in which experts differ.

There are, of course, certain planning applications which are easy to deal with, for they are either obviously right or obviously wrong. An application for a light industrial use of a house, one of a well-kept row, is (apart from very special and unusual circumstances) obviously wrong. An application to use a warehouse in an industrial area for such a purpose is equally obviously right. The cases which cause the greatest amount of trouble to all concerned are those where there is nearly as much to be said on one side as the other. The members of a local authority with such cases before them are usually divided in their views. They do their best to lead in town planning as in other things, but they appreciate that town planning is particularly a matter of degree and that, for example, a badly kept establishment which excites public criticism is often not the result of the planning permission which was granted but of the shortcomings and lack of taste of the individual who has developed or who (more likely) is his successor.

What must always be borne in mind is that other interested parties have no rights in the matter ; if a council resolves to give planning permission the neighbours have no right of objection. The only right of objection is in the applicant if the local authority refuses, and he can appeal. Most lawyers and many other people will applaud Denning, L.J., in his statement that such is as much a dispute as anything else which comes before the courts, and it is possible that a judge or a bench of justices of the peace could come to a right opinion on the facts and decide the dispute adequately and as well as the present or any other tribunal, and by procedure well understood. There are seldom issues of law arising in a planning appeal but nearly always a dispute on the facts (perhaps better stated a matter of opinions).

The real objection of the critics to the appeal procedure seems to be that the appeal is decided by a political institution, namely a member of the Government of the day. In the ordinary case the inspector's report would probably not give any particular joy to the objector or embarrassment to the council and, apart from that, if it had to be published it would be drawn merely as a record of what was said at the inquiry and would not give the inspector's opinion. He may not even express his opinion under the present secrecy. All that is known about that is that the Minister gives his reasons for refusing the appeal. There is no further appeal from these reasons except by political action, a question in the House.

Admission must be made that the safety valve of question in the House is a line not easily appreciated by many. It is, of course, more appropriate to general issues, although an individual case may be the vehicle. If the applicant thinks that he has been badly dealt with by the appeal in the sense that it has not been decided on its merits he cannot object against the Minister as the judge, but only against the politician in the Minister, and then not directly. A Minister is not an inferior tribunal so as to be subject to control by the High Court if he does what the Act requires, and there are precedents to guide him in that : *see Horn* v. *Minister of Health* [1936] 2 All E.R. 1299 ; 100 J.P. 463, and numerous other cases.

Undoubtedly the device of appeal to a Minister is to keep control ministerially, and no doubt general policy must always be behind the Minister's decisions, for which he is responsible to Parliament. As, however, the Minister's written decisions are not secret documents and are in fact reported in technical journals, where all interested parties and their advisers can study them, an abrupt change of policy would be hard to apply through planning procedure and would certainly need the support of an Act. If the change brought appeals before a judge at law, for example the county court judge or a court of petty sessions, permanent reports would probably not become available because of the difficulty of collecting the various decisions to a central point where they could be compiled.

In such a change, so far as points of law were involved, a case might be taken and reported through existing channels in a higher court, but points of law are as rare in planning appeals as disputes of opinion are frequent. Another alternative to the present would be for the inspector himself to give judgment at the public inquiry, but this would promote inspectors to the role of judges and alter the present system fundamentally.

After making due allowances for the particular points of view of the numerous critics, who have had their say on the question of publication of the inspector's report and otherwise, as Denning, L.J., points out, the nature of the dispute is the fundamental point. The alternatives are minister or judge. In small matters (as the majority are) a judge deciding the matter locally would be a system of obvious advantage. As the politics of the country are on party lines, the Minister's interest would seem to be in cases of great public importance where politics and not local

decorum are mainly involved. If objection is taken to the law courts as a forum, in favour of the setting up of an administrative tribunal (a device which seems, incidentally, more attractive to academic than to practising lawyers or business men), the answer must be that a political Minister is no adequate substitute. A Minister exercising a right, say, to withdraw a case to himself from the court is one thing, but a Minister settling local planning appeals involving the development of individual plots of land is another. As a development of (*e.g.*) s. 322 of the Public Health Act, 1936, it seems to go a long way. " EPHESUS "

COUNTY COUNCILS AND DISTRICT COUNCILS IN SCOTLAND—I

By ROBERT URQUHART, *County Clerk, Renfrew*

In a recent article on Local Government Reform published at p. 141, *ante*, your contributor commented on the adoption in England of the "quite simple principle that the members of county councils should be elected periodically from and by the members of district councils (including the boroughs) within the county." Your contributor mentions Scotland in this connexion, and then proceeds to set forth at some length the advantages of and objections to such adoption.

The writer knows from experience that on either side of the Border there is much loose talk about the Law and Practice of Local Government on the other side. Up to a point, such loose talk is pardonable inasmuch as there is no compulsion in England or Scotland to study the law and practice obtaining in the other country and there is of course no comeback on those of us who, from time to time, expatiate with seeming knowledge on our neighbour's local government system. The purpose of this article is to set forth the system of local government relating to the county councils and district councils in Scotland.

Prior to the passing of the Local Government (Scotland) Act, 1929, the principal local authorities in Scotland were the county council, the county road board, the district committee (management of roads and bridges, public health functions, housing, etc.), standing joint committee (police administration), the town council, the district board of control, the parish council and the education authority. With the passing of the said Act, four of those bodies disappeared, *viz.*, the district committee, the district board of control, the parish council and the education authority. The same Act introduced a new local authority—the district council.

The law governing the election of county councils and district councils in Scotland has not varied much since 1929, but the ruling statute now is the Local Government (Scotland) Act, 1947—a consolidating Act. For the purposes of this brief article it should suffice to say that under s. 1 of the 1947 Act, Scotland is divided into counties; counties of cities (Aberdeen, Dundee, Edinburgh and Glasgow); large burghs and small burghs; and the landward area of every county divided into districts—as such districts existed at the passing of that Act. Under s. 25, county councils were obliged to prepare and submit to the Secretary of State for his approval " a district council scheme " dividing the *landward* part of the county into districts in such manner that each district shall comprise one or more electoral divisions; and a district council was to be established for each district.

The landward area of each county (*i.e.*, the whole county, excluding burghal areas) is divided into electoral divisions for the purpose of county landward government; and is divided into districts—each having one or more electoral divisions—for district government. Elections of councillors—both county and district—are held triennially. The county council, through their duly appointed returning officer, is responsible not only for county council elections but for district council elections, although the cost of the latter is met out of district council funds. The members of the county council for the electoral divisions within the district are *ex officio* members of the district council. The other district councillors are elected for the electoral divisions within the district. It is a not uncommon practice for the district council scheme to provide that each electoral division shall be represented by two elected district councillors in addition to the county councillor who is the *ex officio* member. *No provision has ever been made whereby a county council elects or appoints district councillors; or a district council elects or appoints county councillors.* Frequently in modern times, a district councillor, having acquired a taste for or experience in local government, is not unwilling or is persuaded to seek election to the county council.

There is nothing much more to be said about the election of county councils and district councils in Scotland, and it might be well, if English and Welsh readers are properly to appreciate the foregoing broad outline, that they be acquainted with the functions of county councils and district councils in Scotland, the latter of which, so far as the writer is aware, differ very considerably from the functions exercised by district councils in England and Wales. The statutory functions of a district council in Scotland are limited to:

(*a*) The provision of buildings for public offices and meeting;

(*b*) The provision and maintenance of public recreation grounds;

(*c*) The acquisition of rights of way;

(*d*) The acceptance and holding of gifts of property for the benefit of the district;

(*e*) The lease of land for allotments or common pasture;

(*f*) The maintenance of public ways;

(*g*) The right of objection to the registration of clubs in the district to be set up under the Licensing (Scotland) Acts;

(*h*) Certain powers under the Physical Training and Recreation Act, 1937, relating to playing fields, etc.;

(*i*) Power to oppose private legislation in Parliament;

(*j*) Miscellaneous rights and powers under Parts VI and VII of the Local Government (Scotland) Act, 1948, *e.g.*, provision of entertainments under s. 132;

(*k*) Power under the National Assistance Act, 1948, to make contributions to the funds of any voluntary organization whose activities include the provision of recreation or meals for old people.

A district council is not a rating authority, having no power to levy or impose rates. The district council meets such expenditure as it incurs on its statutory functions from sums requisitioned from the county council, which fixes and imposes the district council rate up to a statutory limit of 1*s.* in the £.

In explaining the functions of a county council in Scotland, one has to tread warily because the subject is somewhat complex. In each county having a large burgh or burghs (burghs with a population of over 20,000) and small burghs (burghs with a

population of under 20,000), the County Council has three separate and distinct *personae*; or put another way there are three separate and distinct county councils. Under the appropriate Acts, the county council is the education authority for the whole county, including large and small burghs, and for that purpose the county council comprises (*a*) the elected county councillors for the landward area, (*b*) town councillors from the small burghs elected to the county council by their town councils, and (*c*) town councillors from the large burghs elected to the county councils by their town councils. The number of such burghal county councillors is regulated by the appropriate administrative scheme approved by the Secretary of State. Generally speaking education is the only function exercised by county councils in large burghs.

In small burghs, however, county councils are responsible for the administration of functions relating to the major health services (maternity service and child welfare, infectious diseases, milk and dairies, food and drugs), services under the National Health (Scotland) Act, duties under the National Assistance Act, 1948, civil defence, registration of births, etc., diseases of animals, rivers pollution, blind persons, classified roads, police, fire, town planning, registration of electors, valuation of lands, Explosive and Petroleum Acts. For the foregoing purposes, the county council is comprised of the burghal county councillors and the elected county councillors for the landward area.

The county council for the landward area is responsible in that area for services relating to housing, minor health services (general sanitation, regulation of erection and construction of buildings, smoke abatement), burial grounds, unclassified roads, weights and measures, water supply, drainage, lighting, scavenging.

Any English or Welsh reader, who hitherto has been tempted to regard the district council in Scotland as one comparable to the urban or rural district council in England and Wales, will now no doubt on reflexion conclude that any such comparison is misleading.

Under the 1929 Act, the county council may appoint a district council to act as their agents to carry out any function (other than a function relating to education or police) vested in the county council and exercisable within the district. Notwithstanding the protestations of district councils in Scotland, county councils have been averse to exercise this power of delegation lavishly. Generally speaking, however, it is true to say that most county councils have delegated to district councils their lighting and scavenging functions, excluding the power to incur capital expenditure.

(*To be continued*)

WEEKLY NOTES OF CASES

HOUSE OF LORDS

(Before Lord Simonds, L.C., Lord Porter, Lord Oaksey, Lord Tucker, Lord Asquith of Bishopstone)

January 12, 13, 14, 15, February 19, 1954

DAVIES *v.* DIRECTOR OF PUBLIC PROSECUTIONS

Criminal Law—Evidence—Accomplice—Corroboration—Need of warning to jury—"Accomplice"—Particeps criminis.

In July, 1953, a number of youths, including the appellant, attacked four other youths, including B. During the attack a knife was used and subsequently B died of wounds. The appellant and five others, including L, were indicted for the murder of B, but at the trial the Crown offered no evidence against L and three others, and the jury returned a formal verdict of "Not Guilty" of murder in respect of them. At the trial of the appellant and the fifth youth the jury disagreed. Later, no evidence was offered against the fifth youth, and he was found "Not Guilty" of murder. At the second trial of the appellant L was called as a witness for the prosecution. In his summing-up the trial judge did not warn the jury that L's evidence was, or should be treated as, the evidence of an accomplice. The appellant was convicted of the murder of B.

Held: in a criminal trial, where a person who was an accomplice gave evidence on behalf of the prosecution, it was the duty of the judge to warn the jury that, although they might convict on his evidence, it was dangerous to do so unless it was corroborated; this rule, although a rule of practice, now had the force of a rule of law and where the judge failed to warn the jury in accordance with this rule, the conviction would be quashed, even if, in fact, there was ample corroboration of the evidence of the accomplice, unless the appellate court could apply the proviso to s. 4 (1) of the Criminal Appeal Act, 1907; a person called as a witness for the prosecution was to be treated as an accomplice if he was *particeps criminis* in respect of the actual crime charged in the case of a felony; L, if he was to be an accomplice at all, had to be an accomplice to the crime of murder, and, as there was no evidence that L knew that any of his companions had a knife, he was not an accomplice in the crime consisting in its felonious use; and, therefore, it was not necessary for the trial judge to give a warning to the jury, and the appeal must be dismissed.

Counsel: *Weitzman, Q.C., R. R. Russell* and *P. Weitzman*, for appellant; *The Attorney-General* (*Sir Lionel Heald, Q.C.*), *Christmas Humphreys* and *Maxwell Turner*, for the Crown.

Solicitors: *Thomas V. Edwards & Co.*; *Director of Public Prosecutions.*

(Reported by G. F. L. Bridgman, Esq., Barrister-at-Law.)

COURT OF APPEAL

(Before Sir Raymond Evershed, M.R., Denning, L.J. and Wynn-Parry, J.)

February 2, 1954

In re P, AN INFANT

Adoption—Consent of parents—Freedom from pressure—No liability of parents to proposed adopters for maintenance of child—Contrary statement by children's officer to parents—Validity of consent—Adoption of Children (County Court) Rules, 1952 (S.I. 1952, No. 1258), r. 7, sch. II, para. 17.

APPEAL from Oldham County Court.

It is the duty of a guardian *ad litem* to investigate all the circumstances relevant to a proposed adoption, and, particularly, to make a report whether the consent of the parents is given without pressure from other persons. Notwithstanding that duty, the children's officer of a local authority, appointed as guardian *ad litem* of an infant, tried to persuade the mother (who had intimated her intention to withdraw her consent to the adoption) to change her mind, telling her that the proposed adopters might make a claim for maintenance of the child while he stayed with them during the probationary period. The mother withdrew her consent, but later she changed her mind again and consented to the adoption. After the county court judge had interviewed the parents he made the adoption order. The mother now appealed against the order on the ground that her consent was vitiated by the pressure brought to bear upon her by the children's officer. The county court judge stated in a note that, in his view, the consent of the mother was freely and voluntarily given.

Held: the statement of the children's officer that the mother might become liable for the maintenance of the child was unjustifiable and regrettable; if it had affected the mind of the mother it would have vitiated her consent; but there was no evidence that it had such an effect; and, therefore, the appeal failed.

Counsel: *Gerson Newman* for the mother; *C. T. B. Leigh* for the adoption society; *T. A. C. Burgess* for the guardian *ad litem*; *J. E. Fowler* for the adopters.

Solicitors: *Field, Roscoe & Co.*, for *Louis Berkson & Globe*, Liverpool, for the mother; *Gregory, Rowcliffe & Co.*, for *Taylor & Buckley*, Oldham, for the adoption society; *Norton, Rose, Greenwell & Co.*, for *Sir Robert Adcock*, clerk to the Lancaster County Council, Preston, for the Lancashire County Council; *Arbeid & Co.*, for *Lees & Riches*, Oldham, for the adopters.

(Reported by F. Guttman, Esq., Barrister-at-Law.)

NOTICE

The next court of Quarter Sessions for Southend-on-Sea Borough will be held on Monday, March 15, 1954.

ERRATUM

In our issue for February 20, 1954, at p. 120, *ante*, we much regret that in our Weekly Note of *Gluchowska* v. *Tottenham Borough Council*, the respondents were incorrectly described, both in the title and the text, as the London County Council, not, as should have been the case, the Tottenham Borough Council.

MISCELLANEOUS INFORMATION

APPROVED SCHOOLS—CONTRIBUTIONS BY LOCAL AUTHORITIES

The Approved Schools (Contributions by Local Authorities) Regulations, 1954, S.I. No. 126, provide that contributions by local authorities (except where they are themselves managers or joint managers) are to be increased to 71*s.* 9*d.* per person per week. The Regulations will come into force on April 1.

SHROPSHIRE PROBATION REPORT

The connexion between broken or unhappy homes and juvenile delinquency has been well established, and it is generally admitted that many cases of juvenile crime are due in part to uncomfortable, overcrowded homes which drive children into the streets where they find many temptations.

In his report for 1953, Mr. E. J. Corbett Lloyd, principal probation officer for the combined probation area for the county of Salop, notes a slight reduction in the difficult matrimonial cases dealt with, and this he attributes partly to the fact that more houses are now available, and partly to the fact that at last we appear to be settling down from the upheaval of war. Reconciliation has been achieved in the majority of cases.

On juvenile delinquency, the report comments thus: "Juvenile crime is practically non-existent in rural areas, as compared with town and industrial centres. The fact that matrimonial cases are also relatively few in country districts may have a bearing on the problem, as the hard core of juvenile delinquency is to be found in homes where affection and security are lacking, as demonstrated by matrimonial unhappiness, lack of home comforts and general supervision. At the same time, it cannot escape notice that the standard of intelligence in the majority of children appearing before the juvenile courts is low."

Mr. Lloyd refers to the fact that very few young people who are connected with a juvenile organization, whether Sunday school, boy scouts, girl guides, youth clubs, cadets or air training corps get into trouble, and he adds that probation officers make every effort to persuade those under their supervision to join some such organization. We believe it is the common experience of juvenile courts that the majority of boy and girl offenders are without the wholesome influence and pleasant recreation thus afforded.

BLACKBURN POLICE REPORT

The report of the chief constable of the county borough of Blackburn for 1953 contains the welcome statement that there has been a reduction in the number of crimes known to the police, and in juvenile delinquency. This is the more satisfactory, and a credit to the police, when it is realized that the force is still below strength, the authorized establishment being 183, and the actual strength at the end of the year being 164. The special constabulary is in no better position, the authorized establishment being 100 and the effective strength fifty-eight. There appears to be a slight increase in sickness, the average being 9·62 days per member of the force.

The plain clothes branch is stated to have justified its inauguration by the suppression of many causes of complaint, such as drinking after hours in licensed premises, young persons under eighteen years obtaining intoxicating liquor, street and house betting, and brothels. The Traffic Department and Motor Patrol Section have also had plenty to do. For offences with motor vehicles 176 persons appeared at the magistrates' courts, an increase of seventy persons on the year 1952. Police officers have engaged in the useful work of attending at schools and meetings of youth organizations for the purpose of lecturing on general safety precautions to children and young persons, and the training of school children in the care and use of pedal cycles. The police department is represented at each meeting of the Accident Prevention Committee.

There is a brief but interesting description of the training which is given to recruits. This seems to be thorough, as is necessary these days when policemen have to know so much about so many things.

STATISTICS OF DRUNKENNESS

In his report to the General Annual Licensing Meeting, the chief constable of the county borough of Rochdale gives various figures about the incidence of drunkenness in the town during the year 1953. As he says, statisticians probably pay much attention to them, carefully matching various trends and drawing deductions. Speaking for himself, Mr. Harvey says he finds this difficult because so many factors have to be considered. He does, however, supply the necessary tables from which others may arrive at their own conclusions.

The total number of cases of drunkenness, ninety-six, was the highest number of cases recorded in Rochdale for thirty years. This is the third year in which the figure was in the nineties, which is the more significant in view of the fact that in the immediate post-war years of 1945, 1946 and 1947 the combined total of drunkenness charges was only sixty-six. The average for the last ten years was fifty-four.

Mr. Harvey comments: "I think a useful perspective can be obtained by examining the figures showing if the people concerned had been previously prosecuted. Twenty had been previously prosecuted for drunkenness, while fifty-eight had never been before the courts for this or any other offence. This bears out strongly that it is frequently the odd lapse rather than a systematic course of conduct which brings people to our notice in this connexion."

WALSALL JUSTICES' BULLETIN

When a defendant is told that the court has disqualified him from holding a driving licence it would be expected that he understands what that means, but drivers of motor vehicles are not all equally intelligent and it appears that some of them are in need of an explanation. In his bulletin No. 15, Mr. B. Price Francis, clerk to the Walsall Justices, states that it has been felt for some time that defendants, although the matter is explained to them in court, are not always clear as to the consequences of an order disqualifying them for holding or obtaining a driving licence. A notice explaining the effects of such disqualification has been drawn up and will, in future, be served forthwith upon all persons who are disqualified by the courts. He sets out the form he is using.

Lord Merriman's pronouncement on the subject of the clerk's retirement with the justices is reproduced, and Mr. Price Francis comments that in view of the frequency with which questions of mixed law and fact arise in matrimonial cases and of the necessity for supplying copies of the justices' reasons in the event of an appeal it is obvious that the presence of the clerk is required by the justices in the vast majority of contested cases when they consider their decision.

WALSALL MAGISTRATES' COURTS COMMITTEE

The report of the magistrates' courts committee for the county borough of Walsall shows that consultations between the committee and the local authority in accordance with the provisions of the Justices of the Peace Act, 1949, have proved fruitful. The report states: "In effect, it has become apparent that the new committee carries out all the functions of its predecessor [a finance committee of the justices] together with some new responsibilities. A most satisfactory method of consultation with the local authority as the 'paying authority' was evolved by providing for a joint committee consisting of representatives of your magistrates' courts committee and of the finance committee of the Walsall Town Council. This joint committee met twice during the year for the consideration of estimates and of the implementation of the arbitration award on justices' clerks' salaries and on each occasion satisfactory solutions were reached which obviated any necessity for appeals to the Home Secretary."

CHILD MIGRATION TO AUSTRALIA

The report by Mr. John Moss, C.B.E., published recently by H.M. Stationery Office, gives an interesting account of child migration from this country to Australia. There are seven voluntary organizations in this country which arrange child migration: Dr. Barnardo's Homes; the Fairbridge Society; Northcote Children's Emigration Fund for Australia; the National Children's Home and Orphanage; Church of England Advisory Council of Empire Settlement; the Church of England Children's Society; and the Catholic Council for British Overseas Settlement. In Australia, the Commonwealth and States Governments concerned have each agreed to bear one third of approved capital expenditure required by approved voluntary organizations to provide accommodation and facilities for British and European child migrants introduced by them; the organization concerned paying the remaining third. In addition, the organizations are further assisted in maintaining British migrant children by weekly payments at the rate of 10*s.* per child from the Commonwealth Government, varying rates by the States Governments, and 10*s.* from the United Kingdom Government.

When a local authority desires to arrange for the emigration of a child in their care, the child's consent must be obtained under s. 17 of the Children Act, 1948. The decision as to the minimum age at which a child might be considered competent to give his consent is thus a matter for the local authority. There is no similar requirement in the case of a child emigrating under the auspices of a voluntary organization unless the arrangements are made on behalf of a local authority.

The general view of those receiving migrant children in Australia is that where the accommodation is suitable, the minimum age should only be high enough to ensure that the child is physically and mentally suitable for migration. About five seems to be a suitable minimum age. As to maximum age, there is general agreement that no child should be over twelve years on arrival. At one institution, Mr. Moss was told that the older children were apt to be critical of Australian conditions—complaining of rural roads, isolation, etc., whereas younger children settle down quickly and are contented.

Mr. Moss concludes his report, after an exhaustive survey, with the observation that there seems to be a feeling in some quarters in this country that it is wrong to send a child some 10,000 or 12,000 miles away. He says that if members and officers of children's committees had the same opportunities as he had had of seeing the conditions under which the children are cared for; the arrangements for their education and further education; their placing out and after-care, he is sure they would have no hesitation in helping to fill the vacancies which now exist in approved establishments and would apply a general policy of sending a regular flow of suitable children to Australia.

WILTSHIRE ACCOUNTS, 1952/53

The accounts of the Wiltshire County Council present the unusual combination of a substantial increase in expenditure linked with a rate reduction. As compared with 1951/52 total expenditure increased by £430,000 to £5½ m., of which sixty *per cent.* was met from government grants, nine *per cent.* from miscellaneous income and thirty *per cent.* or £1,690,000 from rates and balances, the latter figure representing an increase of £235,000 over the previous year. Total precepts were reduced from 13*s.* 6*d.* to 13*s.* 0*d.* and it was therefore necessary to call on balances to the extent of a 2*s.* 4*d.* rate to meet the deficiency. The fund balances on general and special county accounts totalled £675,000 at the year end, made up as follows:

	£
Debtors, *less* Creditors	84,000
Stocks and Stores	113,000
Investments	326,000
Cash	152,000
	675,000

These figures disclose a usefully strong financial position: the County Council have thought it wise, however, in 1953/54 to limit the further appropriation from balances to 1*s.* 6*d.*, and to meet the remaining increase in expenditure by raising the precept to 14*s.* 6*d.*

The County Treasurer, Mr. R. N. Tough, A.S.A.A., has included in his Abstract a simple and useful summary of expenditure for 1951/52 and 1952/53. As is common nowadays education expenditure accounts for half of the total, and is growing more rapidly than any other service.

The summary also exemplifies the uncertainties of calculation which seem an inescapable feature of the exchequer equalization grant: rate-borne expenditure increased in 1952/53 by £214,000 to £2,441,000, but equalization grant shown in the accounts decreased by £31,000 to £749,000. For reasons such as this some county treasurers, with the co-operation of the county district treasurers, make their own estimate of the grant instead of taking the Ministry's figure.

Loan debt had grown at March 31, 1953, to £1,763,000, an increase of £354,000 during the year (mostly on education account), but still remained relatively small, being equal to only 15*s.* 8*d.* per £ of rateable value. Further, a considerable part of the total, amounting to £452,000 is on smallholdings account and therefore the appropriate loan charges do not fall as a charge on public funds except to the extent that the smallholdings account is not self supporting. The County Council own 14,200 acres of smallholdings: the result of the year's working was a deficit of £11,000.

Mr. Tough presents numerous useful statistics at the beginning of his Abstract covering all county services, among which we notice the annual costs of pupils in primary and secondary schools—respectively £26 and £47. The big difference emphasizes the increase in cost which has occurred since the war in the transfer of large numbers of children from primary to secondary education.

BRIGHTON PROBATION REPORT

Success or failure of a probationer cannot be truly measured by what happens during the probation period. This is emphasized by Mr. Hugh Sanders, senior probation officer for the County Boroughs of Brighton, in his report for 1953. What the probation officer tries to do is to help the probationer to become a more useful member of the community, not merely to prevent him from breaking the law. As to juveniles, he says "In examining the failures of juveniles under supervision, we find that in the main we have never been able to build up any real relationship with these young people or to get to know them sufficiently well to formulate any real plan of treatment. It is not always easy in the very short time at our disposal to build up the relationship which is so very necessary if we are to help the seriously maladjusted, and I would ask Your Worships once again to consider the suggestion I made some years ago, and which was very favourably received, namely, the provision of accommodation where probationers may follow instructional leisure activities."

To the uninitiated, the expression "social investigation" may seem somewhat vague, and even magistrates who are new to the work may wonder what exactly is meant. According to this report it involves information about the home, family relationships, intelligence, health, special aptitudes or interests, employment, recreation, religious and social activities. With regard to inquiries into an offender's mental and emotional condition, Mr. Sanders says: "This does not mean, as is often supposed, that the probation officer is merely looking for excuses for bad conduct. The offender is left in no doubt by the probation officer that society cannot afford the luxury of endlessly tolerating neurotic ways of life, delinquent or otherwise, and that he is responsible for his actions and must be held to account for them. But the probation officer with his practical knowledge gained through coming into contact with individuals who have been prescribed the various treatments allowed by law, and knowing of their individual response, is probably better able than most to assess the likelihood of success or failure of the various forms of treatment which might be under consideration."

On after-care, the following observations are worth consideration: "We have been very encouraged by the success of those licensed from corrective training, and I have reason to believe that some measure of the success is due to the fact that on licence they are still responsible to the law, and unless they show some effort at rehabilitating themselves they can be recalled to prison for the remaining period of their licence. This system of conditional licence could, I am sure, with great effect, be extended to other long term prisoners rather than the present voluntary system."

In matrimonial cases, Mr. Sanders finds that a great deal of trouble is due to the selfishness of the men and their heavy gambling on horses, dogs, and pools. Women are often too apt to fall victims of the less scrupulous tallymen, accepting obligations far beyond their means.

CORRESPONDENCE

The Editor,
Justice of the Peace and
Local Government Review.

SIR,

THE COST OF SUPERANNUATION

Your article on "The Cost of Superannuation" is most interesting and informative. But are you right in saying that if the Bedfordshire Bill is passed "the annual saving to the county ratepayers would be considerable"?

As I understand it, the original objective of the reformers in this matter was to scrap the complicated funded scheme under the Local Government Superannuation Acts, 1937-53, and to pay local government officers' pensions out of revenue, as it were, in the same way as, for example, police pensions are paid. If this could have been done the saving would have been considerable, because it would have been possible to scrap the administrative staff now required to work the scheme.

This has, however, been judged impracticable, and what is in the Bedfordshire Bill is a much watered-down proposal involving only the discontinuance of the authorities' deficiency payments. The saving to the ratepayers would be only that part of the deficiency payment not covered by grant. In some counties, at least, this would be no more than a penny rate. While not to be despised, this can hardly be regarded as "considerable."

Yours, etc.,
MEREDITH WHITTAKER.

Mercury Office,
Scarborough.

[Our correspondent is correct in saying that there was a proposal to abolish funding but the opinion of both the County Councils Association and the financial expert advising Bedfordshire were against it.

The point was made that the complete abolition of the superannuation fund was not a practical proposition, it being inconceivable

that the superannuation fund balance, amounting in Bedfordshire to over £750,000, should be transferred to the County fund and regarded as disposable, even as capital.

It was therefore decided to proceed with the proposal to abolish the deficiency contribution. This would automatically dispense with the need for quinquennial valuations and thus eliminate the relevant administrative work involved.

Apart from the saving in administration there would be a gross saving in Bedfordshire of £33,000, of which £27,000 is paid by the County Council and £6,000 by the admitted authorities. After allowing for grants the saving to the county council would be £11,000 : the admitted authorities (presumably, in the main, county districts) because of their lower grants would save a relatively high proportion of the £6,000. It is reasonable to estimate that the total saving would be of the order of £15,000, which exceeds a 2*d.* rate. We should have thought this saving was appreciable and worth while.—*Ed., J.P. and L.G.R.*]

The Editor,
Justice of the Peace and
Local Government Review.

DEAR SIR,

RESIDENTIAL NURSERIES

I was interested to read your note at p. 36, *ante*, having special reference to the residential nursery which my Committee have recently opened in Stafford. As to whether old buildings can be adapted satisfactorily at a cost less than needed for the provision of a new building, there is some doubt. Furthermore, it is often found that expenditure on such buildings continues for a long period.

Whilst not for one moment questioning your figures regarding Rotherwood Nursery, there is certainly another aspect of this matter which should be placed before your readers. When carrying out any project it has been the policy of my Committee to do it well and to do it to last. They have found this policy to be both just and economical. The majority of the children who are admitted to the Homes and Nurseries administered by my Committee are in the main children who have been deprived of the greatest privilege to which any child is by right entitled, that of a normal home life. Society owes these children much and it has always been in my Committee's mind to endeavour to make up to these children what they have lost. I think I can, however, in addition to this, claim that my Committee's policy has been justified on economic grounds alone. Doing the work well at the start means that in future years maintenance expenses will be much less than would be the case had the work been done merely to meet in some temporary measure the need of the moment. This policy already shows signs of being fully justified.

In a time of rising prices and increased salaries, it may interest your readers to know that to care for approximately the same number of children my Committee's estimates for next year are likely to show a reduction as compared with those of last year. We are already beginning to feel the benefit financially of doing a job well in the past.

Yours faithfully,
W. F. TAYLOR,
Chairman,
Staffordshire County Council Children's Committee.

117 Park Lane,
Wednesbury.

[We thank our correspondent for his interesting letter. In our notes referred to by him we were not criticizing the cost of the new building as a new building but merely drawing attention to the matter generally as to whether new buildings are in fact necessary.—*Ed., J.P. and L.G.R.*]

The Editor,
Justice of the Peace and
Local Government Review.

DEAR SIR,

"PARISH LAW AND ADMINISTRATION"

I published recently a book which I had written with the above title and on the title page I caused to be printed a statement that the book was edited by "A. G. Mansfield, F.R.V.A., of Gray's Inn, Barrister-at-Law, Clerk of the Council, West Bridgford U.D.C."

I much regret that, owing to a misunderstanding on my part, the book was printed and published by me before it had been so edited and neither the editing nor the publishing arrangements were in any way undertaken by Mr. Mansfield to whom I offer most sincere apologies and regret that this should have occurred.

In order to give as much publicity as possible to my apologies and regret, I should be obliged if you would kindly insert this letter in your columns.

Yours faithfully,
S. B. CLARKE,
Formerly Town Clerk of the Borough of Romsey and now Clerk to the Sheppey R.D.C.

Council Offices,
Minster, Sheppey, Kent.

LAW AND PENALTIES IN MAGISTERIAL AND OTHER COURTS

No. 20

LANDING OF IMPORTED DOG WITHOUT "LANDING LICENCE"

A Chelsea woman appeared at Lewes magistrates' court earlier this month, to answer a charge that she had landed an imported dog without previously obtaining a "landing licence" contrary to art. I of the Importation of Dogs and Cats Order of 1928.

The defendant was not legally represented at the hearing, and when charged in court replied that she "did not mean to go out of the Customs shed without telling the Customs officers that she had the dog with her". Although it was difficult to think that this constituted a valid defence to the charge, the defendant was advised to plead "Not Guilty" and did so.

For the prosecution, evidence was given that the defendant arrived by steamer at Newhaven Harbour from Dieppe on a day in November, 1953. She was seen by a Customs officer in the baggage room holding her small hand luggage. She made no attempt to take that luggage to the bench for Customs examination, and the officer asked her to do so. She said "This isn't luggage" (it consisted of a basket and a small bag). A second Customs officer then interviewed her and said he saw the dog in the basket. Defendant told him it was a Maltese terrier and said "They won't take her, will they? She has had injections". She was asked if she had an import licence issued by the Ministry for the landing of the dog and replied "I was going to apply for one when I returned, but the dog is British; it was taken by me to Bermuda fourteen months ago".

The defendant, in evidence, said that she left Bermuda at four days' notice, and had then gone to New York and Paris on her way to England. She said that it was not a bag she was carrying but a coolie hat and that the dog was not concealed in any way, in fact it was sticking out of the basket at Newhaven. Defendant said that she was confused and worried at Newhaven, and that she made no attempt to get out of the Customs hall without telling the Customs officers about the dog, which had been injected for rabies in New York. In cross-examination, she said she had not asked anyone as to restrictions about landing a dog nor had she made inquiries as to this when she came over from New York to Paris.

The Customs officer told the court that the usual practice for persons having on board ship a dog which they were not authorized to land, was to tell the captain of the boat about the dog and for a wireless message to be sent to the harbour. The dog was then met by harbour authorities on the boat and "crated" there, so that it did not actually set foot on land at the harbour.

Defendant was fined £10, and ordered to pay 3*s.* 4*d.* costs.

COMMENT

The Order of 1928 was made under the Diseases of Animals Acts, 1894 to 1927, but is now treated as having been made under the Diseases of Animals Act, 1950. By virtue of ss. 78 and 79 of the 1950 Act, a breach of the Order attracts a maximum fine of £50.

Article 2 of the Order provides that an imported dog or cat shall for a period of six months after its landing, be detained and isolated at the expense of its owner, upon premises in the occupation of an approved veterinary surgeon and may not be moved from the place of detention during the said period except, with the licence of the Ministry, either to another place of detention or to a vessel for exportation. The stringent provisions of this article are modified in the case of performing animals, canine or feline animals (other than domestic dogs or domestic cats) imported for breeding or for exhibition, and imported dogs or cats which are to be exported within forty-eight hours after landing.

Mr. A. H. Chandler, clerk to the Lewes justices, to whom the writer is greatly indebted for this report, draws attention to the curious provisions of art. 7 of the Order which provide that if any person lands a dog in contravention of the Order he shall be liable, under

and according to the Customs Acts, to the penalties imposed on persons importing goods, the importation of which is prohibited under the Customs Acts without prejudice to any proceedings against him under the Diseases of Animals Act, 1894 (now 1950). Mr. Chandler takes the view, with a little hesitation, that these words mean that a prosecution may be initiated under the Customs Act, 1952, instead of under the Order of 1928 as in this case, and he points out that if his view is correct the maximum penalty which can be imposed by a magistrates' court is £500, and/or twelve months' imprisonment. The writer thinks that Mr. Chandler's view is correct and it is to be noted that under art. 7 (ii) of the Order the dog or cat in respect whereof the offence is committed *shall* be forfeited in the same manner as goods, the importation whereof is prohibited by or under the Customs Acts. R.L.H.

No. 21.

THE OIL MENACE—A CONVICTION

The captain of an ocean going tanker of 16,000 tons with a German crew, flying the flag of Panama, was charged at Morecambe and Heysham magistrates' court on January 22 last with discharging oil into the water at Heysham Harbour, contrary to s. 1 of the Oil in Navigable Waters Act, 1922.

For British Railways, who initiated the prosecution, it was stated that the tanker was lying at Heysham Harbour oil jetty on a day in October, and carried a cargo of oil for Shell.

One evening, the Shell supervisor and a charge hand were on board and saw a large patch of oil on the starboard side. The patch was about 300 feet long and 8′ to 15′ in width and it was found that the oil was coming from a 3″ bilge pipe and seemed to be flowing steadily under pressure. The master sent for his chief engineer and chief officer and then said " It has only run out of the pipe. There is no pump working. It is only a small amount ". The amount of oil emitted was in excess of five gallons, which was about the amount the pipe would hold. The captain later explained to a police sergeant that an oilman had opened the pipe by mistake. The prosecutor said that there was no suggestion that the tanker was being pumped out.

For the defendant, who pleaded Guilty, it was stated that the tanker came to discharge a full cargo of oil petroleum spirit. An experienced man inadvertently opened the wrong valve, which opened the end of the bilge pipe used for getting the bottom part of the tank clean, and the oil started to run out. There was no power on the pipe which held about ten gallons.

The defendant was fined £25 and ordered to pay costs amounting to £3 18*s*.

The Chairman, in announcing the decision of the court, said " There is no doubt about the seriousness of these offences to the coast resorts. Something drastic will have to be done if they continue. We accept the plea that in this case it was an accident."

COMMENT

Mr. Tom Armstrong, clerk to the Morecambe and Heysham Justices, to whom the writer is indebted for this report, mentions in his covering letter that the case is of a somewhat unusual type. This is, unfortunately, all too true, for there has been no noticeable abatement of the modern menace of oil covered beaches in the last year or two despite wide publicity. The difficulties of bringing home a case are, in the normal way, almost insuperable and it would seem that the only real hope of putting an end to this vile habit of releasing oil from ships, which subsequently smears itself all over the beaches, is by persuasion and the education of masters of ships visting this country to realization of the nuisance their thoughtlessness can cause.

Section 1 of the Act provides for a maximum penalty on summary conviction of £100. The section makes the master of a vessel from which oil is discharged or allowed to escape in waters to which the Act applies, responsible, and by s. 8 (3) of the Act the waters to which the Act applies are defined as meaning the territorial waters of Great Britain and Northern Ireland and the waters of harbours therein.

It is to be noticed that by s. 5 of the Act the Court may order that the whole or any part of the fine imposed in respect of an offence under s. 1 shall be paid to such person as the Court may direct towards meeting the expense to be incurred in the removal of the oil discharged or allowed to escape. R.L.H.

PENALTIES

Caterham—February, 1954—dangerous driving—fined £15, to pay £2 2*s*. costs. Defendant, a motor cyclist, tried to overtake another vehicle in front of him, hit the off-side kerb and " cannoned off " in front of an oncoming car. Defendant said the accident was the first in twenty-five years driving. He was trying to overtake a motorist who had earlier forced him off the road so that he could take his number and report him to the police.

Maesteg—February, 1954—sending a false telephone message for the purpose of causing annoyance and anxiety—fined £10. Defendant, using a fictitious name, telephoned the police in the early hours of the morning and told them he had been injured and taken to hospital. A number of calls were made and defendant pleaded that his action was taken to worry the woman with whom he had been living and with whom he had had a quarrel.

Bristol—February, 1954—embezzling—three charges—twelve months' imprisonment. Defendant, the thirty-seven year old mother of a six year old boy, was employed as head clerk to a firm carrying on a furniture hire purchase business. She received sums of £12, £10 and £4 from customers and retained the money for her own use. Defendant, who had been earning £5 10*s*. a week, asked for sixteen other offences, seven of embezzling and nine of larceny, to be taken into consideration. The amount involved in the outstanding offences was £109. Defendant had previously been sentenced to six months' imprisonment for embezzling.

Dewsbury—February, 1954—causing unnecessary suffering to a dog—three months' imprisonment, disqualified from holding a dog licence for life—fined £5. Defendant, a woman of forty, admitted that she had left the dog locked in a house without food and water for a month. An R.S.P.C.A. inspector said that the dog, which was found to be alive when the door was opened, had kept itself alive by eating its own flesh. The dog had to be destroyed.

THE WEEK IN PARLIAMENT

From Our Lobby Correspondent

Further questions were asked in the Commons about affiliation orders made against American servicemen.

The Secretary of State for the Home Department, Sir David Maxwell Fyfe, said there was no information available about the number of affiliation orders made against members of the United States forces in this country. He was informed, however, by the United States Service authorities here that their records showed that, during the period from 1948 up to the present, less than 1,000 inquiries had been received about illegitimate children and that in a substantial proportion of those cases the marriage of the parties had followed.

As had already been announced, discussions with the United States authorities were in progress and were being pressed forward as quickly as possible. He would make a statement as soon as he was in a position to do so.

Sir David declared that a figure of 70,000, which had been quoted, was, by any reasoned application, complete nonsense.

The Under-Secretary of State for Foreign Affairs, Mr. A. Nutting, told a questioner that there had been no formal representations on the matter to the United States. He did not see any need for formal representations as the United States Government were ready and anxious to help in the matter. It was better to have discussions through the usual channels than to indulge in formal representations for which there was no need at the moment.

Mr. Chuter Ede (South Shields) asked Mr. Nutting to bring to the notice of the American Government the long delay that had occurred in the matter, and the consequent intensification of feeling in this country with regard to it.

Mr. Nutting replied that he thought the United States Government were aware of that, but it was a very complicated problem.

Mr. R. W. Sorensen (Leyton) gave notice that he would raise the matter on the Adjournment.

PETTY SESSIONAL DIVISIONS

Mr. B. Parkin (Paddington N.) asked the Secretary of State for the Home Department what steps he had taken to secure a review of petty sessional divisions in London ; and when he intended to make an order to carry that review into effect.

Sir David replied that he understood that the Magistrates' Courts Committee had reviewed the division of the county of London into petty sessional divisions, and intended to submit a draft order to him in due course proposing certain alterations.

ROBBERIES WITH VIOLENCE

Sir David told Mr. G. Craddock (Bradford S.) that the number of men aged eighteen and less than thirty convicted in the years 1947 to 1952 of offences of robbery under s. 23 (1) of the Larceny Act, 1916, was 1,335. He said he hoped that the action which the House took last year in dealing with violence was having, and would continue to have, a salutary effect. He believed that, every year, the penal provisions which they had introduced were acting with more effect on the problem.

CAPITAL PUNISHMENT

Pressed by Opposition Members to say what steps he proposed to take to implement the recommendations of the Royal Commission on Capital Punishment, Sir David said he could not add to previous replies on the subject. Asked for a debate, he said that a request could be made through the usual channels.

FREE LEGAL ADVICE

The Attorney-General told questioners from both sides of the House that he was not yet in a position to say when the Government intended to introduce the scheme for providing free legal advice.

PARLIAMENTARY INTELLIGENCE

Progress of Bills

HOUSE OF LORDS

Wednesday, February 24

RIGHTS OF ENTRY (GAS AND ELECTRICITY BOARDS) BILL, read 3a.
CHARITABLE TRUSTS (VALIDATION) BILL, read 3a.

HOUSE OF COMMONS

Tuesday, February 23

CIVIL DEFENCE (ELECTRICITY UNDERTAKINGS) BILL, read 3a.
BRITISH TRANSPORT COMMISSION BILL, read 2a.

Friday, February 26

TOWN AND COUNTRY PLANNING BILL, read 1a.

PERSONALIA

APPOINTMENTS

Mr. Harold James Hamblen has been appointed by Her Majesty to be deputy chairman of the Court of Quarter Session for London.

Mr. Philip Fores, barrister-at-law, has been nominated president of the London Building Acts Appeal Tribunal. The Home Secretary has nominated Mr. Nils Henry Moller deputy president.

Mr. A. C. Aylward, deputy clerk of Kesteven county council, has been appointed clerk of the Huntingdonshire C.C. He is succeeded at Kesteven by Mr. Reginald Arthur Pearson, who has been assistant solicitor there since 1945.

Mr. G. T. Heckles, senior assistant county solicitor since 1946, has been appointed deputy clerk of the Kent County Council. Mr. Heckles was admitted in 1928, winning the John Mackrell Prize and Honours. He was in private practice in London before entering the local government service with the City of Cambridge. He was later at Nottingham. He has been on the staff of Kent County Council since 1934.

Mr. Derrik James Taylor, senior assistant solicitor to Stoke-on-Trent, has been appointed chief assistant solicitor to Leicester.

Mr. E. Bradbury, assistant solicitor to the Scarborough corporation has been appointed assistant solicitor at St. Helens.

Mr. Colin Campbell, whom Mr. R. A. R. Gray has succeeded as assistant solicitor at Solihull, has been appointed deputy town clerk of Boston, Lincs.

RETIREMENT

Mr. R. E. A. Webster, solicitor, who has been franchise coroner for the Isle of Wight since 1941, is to retire owing to ill-health.

OBITUARY

Col. Sir Geoffrey Hippisley Cox, C.B.E., T.D., D.L., a partner in a firm of Parliamentary agents, has died at the age of 69. He was admitted in 1907, and specialized in Parliamentary work. He was a member of the Statute Law Committee for many years, and was a Territorial soldier.

Mr. Geoffrey Francis Edward Wilson, coroner for Lancaster and secretary of the Lancaster, Morecambe and District Law Society, has died at the age of 60. Mr. Wilson, who was admitted in 1919, was senior partner in a Lancaster firm.

Mr. Joseph Farndale, C.B.E., who was chief constable of Bradford from 1900 until his retirement in 1938, has died at the age of 89. He joined the police at twenty, and was chief constable of Margate and York before going to Bradford, where he was awarded the Kings Police Medal in 1914 and created an O.B.E. in 1920. He was promoted to C.B.E. four years later. For the seven years before his retirement he was chairman of the Yorkshire traffic commissioners.

REVIEWS

The Iron and Steel Act, 1953. By Walter Gumbel and Kenneth Potter. Price 17s. 6d. net. London : Butterworth & Co. (Publishers) Ltd.

The Iron and Steel Act, 1949, differed from other nationalization statutes carried through by the Labour Government, in that the nationalized units retained some measure of their former identity. The corporation established by the Act operated as a holding company, dealing with matters of broad policy, and fulfilling statutory duties in relation to finance and development, while the separate undertakings were carried on much as they had been before. *Prima facie* this should have made it more simple to retransfer control of the industry to private interests, when the present Government came into office, than was the parallel operation in the transport industry, because that which had to be transferred was financial control, rather than physical assets merged in a common pool. To say this, however, is not to say that the mechanics of transferring the industry back to ordinary shareholders could be easy. The Iron and Steel Act, 1953, repeals the Act of 1949, and provides for dissolving the Iron and Steel Corporation of Great Britain. The shares of existing companies, which had been retained as operating units under the Act of 1949, have to be returned to private ownership, and, in the meantime, those companies have to be carried on effectively. While the Act contemplates that the shares are to be put on the market, it does not intend that they shall be sold at break-up prices, and it may take years to complete the transaction.

Meantime, complicated legal provisions are necessary, as well as the making of complicated commercial arrangements. The latter are under the general direction of the Minister of Supply, and the former under the supervision of the Treasury. It follows that the Act of 1953, although it comprises only thirty-six sections and three schedules, many of the sections being short and formal, is exceptionally complicated, and difficult to follow into its practical implications.

In the present work, which is annotated section by section, the notes pick up every point of difficulty that can be foreseen. Moreover, approximately one third of the work is taken up by an introduction, beginning with the necessary explanation of the Act of 1949 and of the steps taken between 1949 and the general election of 1951 to bring that Act into operation. Immediately on the new Government's

coming into office after that election, a stop was put to alteration (by the Iron and Steel Corporation) of the financial structure of companies which had not at that time been fully absorbed, and the next eighteen months, up to the passing of the Act of 1953, were a transitional period—a period of awkwardness in administration, with legal consequences reflected in the Act of 1953. Each step in the transfer is fully explained in the introduction, where will also be found an exposition, in full detail, of the duties of the Iron and Steel Board set up in substitution for the former Corporation, and of the powers of the Minister of Supply and the Treasury.

There are other bodies affected by the Act of 1953, especially the National Coal Board and the Gas Council, and their position also is explained.

It may be that not many of our own readers will be directly affected by the Act of 1953, but they (or any other legal practitioners who do find themselves concerned) will be able, in the present work, to find an answer to every question likely to arise.

Staples on Back Duty. By Ronald Staples and Percy F. Hughes. Price 21s. net. London : Gee & Company (Publishers) Ltd.

This is a work which has been before the public for more than twenty years and has reached its sixth edition. In the preface to the first edition in 1931, Mr. Staples (who is editor of *Taxation*) said " the law on the subject is weak, the zeal of the official is strong, and the ignorance of the taxpayer is colossal ".

At the present day, after much experience, the taxpayer is probably less ignorant, and certainly the law has been reinforced so that matters are more nearly even between the inspector of taxes (who is concerned to protect the honest taxpayer) and the evader who is, properly, to be regarded as the honest taxpayer's worst enemy, rather than as a person to be pitied. Even the man who has evaded obligations is, however, entitled to a fair trial, in the technical sense if his case comes into court, and in a wider sense when it is being handled, as most such cases are, by the Revenue machinery. To this end, the taxpayer's accountant and solicitor, if his solicitor becomes involved, are justified in doing anything they can do to help him, within proper professional limits. The work includes a chapter on the psychological aspect of tax evasion, which Mr. Staples regards as the most important phase of the subject.

Back duty negotiations may affect several classes of persons, including those who are completely honest in intention even in regard to income tax, while a taxpayer, who is normally honest and well thought of in his own neighbourhood, will often conceal tax default even from his own professional advisers. The authors suggest that it would be a good thing for the Treasury, and for the moral good of taxpayers themselves, if an opportunity were given for persons who have defrauded the Revenue to make voluntary confession and pay up without penalties. This has been tried in other countries, and there is some body of support for its being tried here. Discussion of its merits would be outside the scope of this review.

Having dealt with the psychological aspect of the matter, the authors pass to practical treatment, beginning with fraud and wilful evasion, and the collection of penalties, and then to an analysis of the mode in which back duty cases come to light. Methods of investigation are explained, and examples are given of how to prepare statements of capital and income, and there is a helpful explanation of the sort of settlement that may be expected. The authors seem to us rather too impatient with the Revenue, and unduly critical of its efforts to detect evasion. They recognize that persons who would not cheat neighbours or commercial associates will sometimes cheat a public body, like the State or British Railways, and have no compunction. In other words, these are even greater temptations to public than to private fraud. We can see no more ground for blaming Revenue officials using every method of detection open to them, than there is for blaming Scotland Yard when it acts " on information received ". On the practical side, there is, perhaps, rather too much detail, but the accountant who wishes to master this sort of practice is not likely to complain.

Butterworths Costs. Second Cumulative Supplement. By B. P. Treagus and H. J. C. Rainbird. Price 15s. net. London : Butterworth & Co. (Publishers) Ltd.

Butterworths Costs is a major work, outstanding in its own field. The present supplement brings it up to date as at July 31, 1953, and, in the case of Quarter Sessions costs, as at October 5, 1953. The section upon Quarter Sessions has been contributed by Mr. Alfred Swift, Deputy Clerk of the Peace for the County of London. The editors of the remainder of the book are both members of the Supreme Court Taxing Office. It can therefore be taken that the work will be completely reliable. It is compiled upon the ordinary basis of supplements to major works by Messrs. Butterworth: that is to say, there is a noter-up, page by page, and there are new precedents for bills of costs both in the High Court and at Quarter Sessions. The two hundred pages of the work are all of great importance to the practising solicitor, and it may be mentioned that, although this is no more than a supplement, the table of cases referred to covers six closely printed pages.

The main work and the supplement are available together for £7 10*s.* 0*d.*

Guide to the Legal Profession. By Maurice W. Maxwell. Price 7s. 6d. net. London : Sweet & Maxwell Ltd.

This is the fourth edition of a useful little handbook for the intending student. It tells him how to set about becoming a member of the Bar or a solicitor, with a good deal of detailed information about reading in chambers, the choice of books, the method of becoming articled to a solicitor, and so forth. The book even goes into some matters of detail, such as the mode of addressing judges and other functionaries. Hints are also given as to reading by the pupil, apart from what he has to do in chambers or in an office where he is articled, with information about university facilities.

"THIS PRECIOUS STINKE"

Recent medical pronouncements about the possible deleterious effect of smoking on the health, with particular reference to lung-cancer, have aroused public anxiety. The Government have promised a searching Inquiry into the whole subject, and the names of those who will be charged with this important task are awaited with eager interest.

The occasion is timely, for 1952 was the quadricentenary of the birth of Sir Walter Raleigh—soldier, explorer and man of letters. While he was yet a child the tobacco-plant had been brought from Mexico to Spain and Portugal, and the word *nicotine* takes its origin from Jean Nicot, the French Ambassador in Lisbon, who sent some seeds to Queen Cathérine de Médicis in 1558. Long before that time smoking was practised by the American Indians, among whom the calumet, or pipe of peace, was and is an object of veneration reserved for solemn and ceremonial occasions. It was Raleigh, however, who introduced the smoking habit into England, from Virginia, in 1584. There is a vivid, but probably apocryphal, story that, when Raleigh was enjoying his first pipe, his servant emptied a bucket of water over him in the belief that he had set himself on fire.

The now ubiquitous cigarette is a later upstart institution, but the pipe has a long tradition of its own. The briar is generally associated with the Englishman ; the painted porcelain-bowl and pendulous stem with the German peasant ; the clay-pipe with the Irishman. In the Orient smoking is a dignified and leisurely pursuit, little suited to the bustle of western life. The narghilah, or hookah, is popular among the Persians, the Arabs and the Turks ; it is an elaborate contraption in which the smoke is washed and cooled by being drawn through a tube, several yards in length, immersed in water.

The Englishman is adept at finding sound moral and practical reasons for following his inclinations, and it is not surprising that the growing popularity of tobacco in Stuart times led to extravagant claims for its allegedly curative powers. Writers of the age dubbed it *herba panacea* and even *herba sancta* ; the poet, Edmund Spencer, calls it " divine" and the astrologer William Lilly refers to it as " our holy herb nicotian ". Its literary associations were extended by Charles Lamb and William Hazlitt, though Thomas de Quincey preferred the stronger narcotic properties of opium. In modern times the pipe has become a sort of symbol of mental activity ; Conan Doyle immortalized the pipe of Sherlock Holmes, with its curved stem

as essential to the reflective process, and more than one present-day novelist regards it as an indispensable adjunct in photographs of " the author at work ". In the mouth of the politician the pipe is meant to be a symbol of rugged honesty and benevolence—an interesting throw-back to the custom of the American Indians. Lord Lytton went so far as to write that " the man who smokes thinks like a sage and acts like a Samaritan " ; this is a wide generalization, but there may be something in it, provided it is limited to pipe-smoking. Villains in literature and drama have been known to indulge in a tight-lipped grip on a cigarette, or to chew savagely on a cigar ; but who ever heard of a villain smoking a homely pipe?

Enthusiastic praise of the tobacco-habit is so general that it is refreshing to find at least one contrary view—that of James VI of Scotland, who in 1603 succeeded Elizabeth I as King James I of England. History has stigmatized him as a tyrant and a pedant, endorsing the gibe of Henri IV of France who labelled James " the wisest fool in Christendom ". This is not entirely fair, for James was a learned man and the master of a forceful and lucid prose style. His pamphlet, *A Counterblaste to Tobacco*, published early in his reign, reflects the austerity of his Scottish education, but is chiefly inspired by his detestation of Raleigh.

James wastes no time but strikes at once the keynote of his attack :

> " This vile custome of Tobacco taking is one of that sort of customes which, having their originall from base corruption and barbaritie, doe make their first entry into a Countrey by an inconsiderate and childish affectation of Noveltie . . . It was first found out by some of the barbarous Indians to be a Preservative or Antidote against a filthy disease . . . so that, as from them was first brought into Christendome that most detestable disease, so from them likewise was brought this use of Tobacco, as a stinking and unsavourie Antidote for so corrupted and execrable a maladie, the stinking suffumigation whereof they yet use against that disease, making so one canker or venime to eate out another."

After a few sneers at Raleigh, " the first authour of the custome and a father so generally hated ", the King really gets into his stride. In fairness it must be admitted that he does not content himself with mere abuse, but endeavours to counter by logical reasoning the argument that tobacco has valuable curative properties :

> " First, it is thought by you a sure Aphorisme in the Physickes that, the braines of all men beeing naturally cold and wet, all drie and hote things should be good for them ; of which nature this stinking suffumigation is, and therefore of good use to them. Of this argument both the proposition and assumption are false, and so the conclusion cannot but be voyd of it selfe."

Having demolished this argument, to his own satisfaction, by appeals to medical experience, James proceeds to disprove the allegations

> " that the whole people would not have taken so generall a good liking thereof, if they had not by experience found it very soveraigne and good for them, and that by the taking of Tobacco divers and very many doe finde themselves cured of divers diseases."

Of the former thesis he says :

> " Such is the corruption of envy bred in the breast of every one, as we cannot be contente unlesse wee imitate everything that our fellowes doe, like Apes, counterfeiting the manners of others, to our owne destruction."

Of the latter assertion he shrewdly observes :

> " Peradventure when a sicke man hath had his disease at the height, he hath at that instant taken Tobacco, and afterward, his disease taking the naturall course of declining, and consequently the Patient of recovering his health, O then the Tobacco, forsooth, was the worker of that miracle."

From scientific he proceeds to theological argument, and enumerates " what sinnes and vanities you commit in the filthy abuse thereof." He then goes on to the economic consequences of indulgence :

> " Now how are you by this custome disabled in your goods, let the Gentry of this land beare witness, some of them bestowing three, some foure hundred pounds a yeare upon this precious stinke."

And finally he deals with the resultant corruption of good manners :

> " Is it not both great vanitie and uncleannesse, that at the table, a place of respect, of cleanlinesse, of modestie, men should not be ashamed to sit tossing of Tobacco pipes and puffing of the smoke of Tobacco one to another, making the filthy smoke and stinke thereof to exhale athwart the dishes and infect the aire, when very often men that abhor it are at their repast ? . . . Moreover, which is a great iniquitie, and against all humanitie, the husband shall not be ashamed to reduce thereby his delicate, wholsom and cleane complexioned wife to that extremity that either she must corrupt her sweet breath therwith, or els resolve to live in a perpetual stinking torment."

This passage seems to indicate that even the women were beginning to succumb to the habit. The gem is the final passage, summing up the whole indictment :

> " A custome loathsome to the eye, hatefulle to the nose, harmefull to the braine, dangerous to the lungs, and in the blacke stinking fume thereof neerest resembling the horrible Stigian smoake of the pit that is bottomlesse."

After reading this furious diatribe, it is interesting to recall that the imperturbable Raleigh, who was brought by James to the block, in 1618, on a trumped-up charge of treason, still had the last word, which has echoed down the ages. For a contemporary account of his execution tells that he " tooke a pipe of tobacco a little before he went to the scaffolde." A.L.P.

PROBATION

He hadn't had a chance, he said, of going straight at all,
It seem'd as if he'd always had his back against the wall ;
His mother died when he was young ; his father took to drink,
And then their bits of savings quickly vanished down the sink.

His scanty meals unfitted him for work of any kind ;
His health broke down and this began to prey upon his mind ;
He couldn't face temptation for he had no strength of will,
And that was how he came to take the money from the till.

The Bench were sympathetic when they heard his sorry tale,
They felt they were not justified in sending him to gaol ;
They placed him on probation for a year or two instead,
And friends renewed his wardrobe while they saw that he was fed.

He called at the Probation Office daily for a while,
He soon regained his confidence—was even seen to smile,
For there he found such friendship as he'd never known before ;
He also learned 'twas no disgrace—the fact of being poor.

With health restored, he very soon began to play the game ;
His interest widened and he thus forgot his former shame ;
By steady application he has now achieved success,
And, thanks to his probation, he has found true happiness.

* * *

This isn't just a fairy tale—it happens every day,
Probation has already helped so many on their way ;
It starts by giving friendship while it teaches how to live,
To care for one another and to pity and forgive,
To play the game through life and to observe the Golden Rule—
Indeed, this has been taught in every age and every school :
It wasn't called " Probation " but it's methods were the same,
There's nothing new about the job—we've merely " changed the name " !

J. E. MORGAN.

PRACTICAL POINTS

All questions for consideration should be addressed to "The Publishers of the Justice of the Peace and Local Government Review, Little London, Chichester, Sussex." The questions of yearly and half-yearly subscribers only are answerable in the Journal. The name and address of the subscriber must accompany each communication. All communications must be typewritten or written on one side of the paper only, and should be in duplicate.

1.—Boundary—*Maintenance of ditch.*

In 1840 certain trustees were granted land and they caused to be constructed thereon a Wesleyan chapel. The chapel (now used as a Sunday school) bears a plaque stating the date of erection to be 1842. In 1845 an adjoining piece of land was acquired by twenty-four gentlemen who constituted themselves the P Cemetery Company. Gravespaces were sold and interments took place from time to time until December, 1902, as from which date the cemetery has been disused, save for interments in gravespaces over which the exclusive rights of burial have been acquired. The original owners died and the cemetery fell into a derelict condition—so much so that on more than one occasion local persons have put the ground into a fair condition. It was not and still is not possible to trace the present owners. In 1934 the council undertook the repair of the cemetery in accordance with s. 21 of the Local Government (1858) Amendment Act, 1861, as re-enacted by the Public Health Act, 1875, s. 343. The cemetery consists of a rectangular piece of ground save for the north-western corner wherein the chapel has been erected, and a ditch runs along the southern and eastern boundaries of the chapel, with the exception of approximately twenty feet where the chapel projects beyond the normal building line to the far boundary of the ditch. There are five downpipes from the chapel which drain into the ditch and, approximately in the middle of the ditch on the eastern side of the chapel, there is a bolt which drains away under the building. Will you please advise whose is the responsibility, in your opinion, for the maintenance of the ditch which lies between the chapel and the cemetery? BURSOL.

Answer.

This is entirely a matter of inference. If the present owners of the school (late chapel) hold the original deeds, or if these are lying in some local solicitor's office, it may be possible to verify the inference, or contradict it. We have here a rectangular plot, from which a smaller rectangle was apparently carved in 1840. The grantor (owner at that date of the large rectangle) is unlikely to have sacrificed a strip of the land retained by him, to provide a boundary ditch—why should he? The probability is that the plot he conveyed to the Wesleyan trustees, whether on sale or gift, was bounded by a line which later became the outer edge of the ditch. The trustees could then enclose their property by a ditch or by a fence, as they preferred; this view is supported by the facts that for twenty feet they carried their building across the ditch; that five of their down-spouts discharge into it, and that it is emptied away under their building. We are not sure what is implied by "responsibility for maintenance of the ditch", but there is nothing to show that anybody except the trustees (or other owner) of the former chapel has any responsibility.

2.—Contract—*Public bath—Custody of clothing, etc.*

What in your opinion is the liability of the local authority for the safe custody of persons' clothes and effects deposited with an attendant in the council's swimming pool? A charge is made for admission to the swimming pool. This charge also covers use of cubicle and a "hanger" on and in which clothes are placed before deposit with an attendant. Nothing is said on the ticket restricting the liability of the council. Can the council avoid any liability by displaying notices that no liability is accepted for loss of or damage to articles left with the attendant? ASWIM.

Answer.

A public bath differs from a public library in that there is no general right to enter and use it. It is a trading enterprise, and the relation between the owner and the bather is purely contractual, whether the owner be a local authority or, for example, the proprietor of a road house. In the English climate, and with English conventions, the bather cannot in practice arrive in bathing costume. It is, therefore, in our opinion, an implied term of the contract that the owner of the premises will provide facilities for leaving the bather's clothes, in reasonable safety. It would not be reasonable to provide nothing better than (say) benches close to a boundary hedge, through which clothes could easily be stolen. On the other hand, the owner cannot reasonably be expected to provide (without extra charge) facilities for leaving watches, wallets, etc. Whilst, in our opinion, the degree of provision implied by the contract is essentially a "jury" question, we should direct a jury that the owner of the premises could not relieve himself of all liability by the notices you mention, since the other contracting party must leave somewhere the clothing which was essential to his reaching the premises at all, but that the notice would be effective to escape liability for articles beyond that essential clothing, since the customer brings such articles at his own risk.

3.—Criminal Law—*Fraudulent conversion—Agent working on commission.*

I should be grateful for your opinion on the following circumstances:

Mrs. X answers an advertisement in a newspaper and as a result is appointed an agent for a large firm trading on credit. The agent is expected to canvass for customers and had a free hand in this connexion.

The arrangement is that after the customer has paid the initial deposit the selected article is dispatched by the firm to the agent and handed by her to the customer. The agent collects the initial deposit and forwards it to the head office with an order form. The agent then collects the weekly payments from each customer and should forward all such payments to the head office.

This was done by forwarding the sum of all payments collected in the week in the form of a postal order, by post to the head office. The agent sent with the postal order a list showing the amount paid by each individual customer. Each customer has a payment card and Mrs. X marks each payment on the card and signs it. The agent signs an agreement "To pay to the company promptly all money received on their behalf".

It transpires that the agent has withheld one or more payments from each customer. Although receipt of payments is marked on the payment cards, the payment has not been shown on the weekly list to the head office and the cash has not been received at the head office.

The agent is not paid a salary but receives ten *per cent.* commission on each sale when all the payments have been made.

The firm for whom Mrs. X was agent have declined to prosecute. However, I am of the opinion that each customer could be treated as an injured person and Mrs. X charged with fraudulently converting money entrusted to her by the customer for the purpose of delivering it to the company, contrary to the Larceny Act, 1916, s. 20 (1) (iv) (*a*).

I should add that the company has honoured all payments received by their agent, whether paid in to the company or not.

In some of the cases the customer has not paid her instalment direct to the agent, but has handed it, together with her payment card, to a friend, who has paid the money to and had the card receipted by the agent. In this position, would the injured person be the customer or the friend who paid over the money on the customer's behalf? JEPUTY.

Answer.

There appears to be no reason why the police, if so advised, should not prosecute in respect of offences against s. 20, *supra*. A summons or warrant should of course be applied for. It is not necessary to specify an injured party, but in the last-mentioned case it would be the one who supplied the money.

4.—Justices Clerks—*Fees—Order of exemption under Licensing Acts.*

We shall be grateful if we can have your opinion on a matter of some interest and urgency in relation to fees to be charged for applications for extension of permitted hours during the Christmas season.

Last year in a number of divisions we made applications for extensions on Christmas Eve, Boxing Night and New Year's Eve and a single fee of 5*s.* was charged for each licensee concerned. This year, in one division, the licensees instructed us to apply for one hour's extension on Christmas Eve and Boxing Night and 2¼ hours extension on New Year's Eve.

The clerk to the justices has raised the question as to whether, in these circumstances, he would be in trouble with the Home Office Auditor unless he charges a separate 5*s.* fee for the New Year's Eve extension as being for a different period of time. There appears to be little or no authority on the point and the clerk and ourselves would welcome any assistance you can give us in the matter. JULEFEE.

Answer.

As s. 107 of the Licensing Act, 1953, speaks of the "special occasion or occasions" specified in the order, it would seem that one order can be made in respect of more than one occasion, and consequently that only one fee should be charged.

5.—Land Drainage—*Internal drainage boards—Liability of commons and commoners.*

An internal drainage board has recently extended its area to include parts of common land. The common land is the waste, probably, of more than one manor. Eighteen occupiers of cottages and land adjoining or adjacent to the common claim rights of grazing for stock, pigs, donkeys, goats, and geese and exercised these rights until the land was

scheduled in World War Two for cultivation as arable land. The rights of the tenants were over-ridden but we believe that some compensation was awarded them. Since the termination of the war parts of the common have been included within the drainage board area.

The common is not assessed under sch. A but, under s. 29 of the Land Drainage Act, 1930, the drainage board assessed the part of the common brought within the area as agricultural land under s. 29 (2). Notice of the assessment was given to the commoners but not to the lord of the manors. Under the Act the occupier has to pay both his and the owner's rates, but he can recover the owner's rate from him.

A number of the commoners refused to pay the drainage rate and were summoned before the petty sessional court and, as they did not employ legal help, the assessment was confirmed by the justices.

One of the commoners has made an application to the lord of the manors to pay his share, as owner, of the drainage rate.

We should be very grateful if you could give us your opinion as to whether :

(1) The lord of the manor is the owner of the land for the purpose of the drainage rate, and liable to pay the owner's rate.

(2) If so, whether the failure to serve notice of assessment on the owner releases him from the liability of payment in respect of the assessment in question.

(3) Whether the rights of the commoners constitute an occupation of land entitling the board to claim drainage rates in respect thereof.

DRAY.

Answer.

(1) We think so. The expression " owner " is not defined, but " land " includes an " interest in land ", and s. 29 (2) of the Act of 1930 recognizes that there may be such interests not assessed to tax under sch. A.

(2) Yes, in our opinion.

(3) This seems doubtful : *R.* v. *Chamberlains of Alnwick* (1839) 9 A & E. 444.

6.—Legality of Expenditure—*Building for letting.*

The council of the borough under the powers contained in s. 80 of the Housing Act, 1936, construct and provide, for letting to tenants of council houses, blocks of garages on selected sites on their estates. The council receive many applications in addition for garage accommodation from inhabitants in the borough occupying privately owned property. In view of this need which undoubtedly exists, they are anxious to provide garages for letting to the inhabitants of their area who have applied for these garages in other areas of the town.

Your valued opinion would be appreciated on the following points :

(1) Have the council power to provide garage facilities under the Housing Act, 1936, for people who are not in fact, council tenants ;

(2) Is there any other statutory power enabling the council to provide garages for the benefit of inhabitants of their area generally.

PARAPLUIE.

Answer.

1. No, in our opinion.
2. We do not know of any such power.

7.—Licensing—*Service of notice on police—New law substituting " chief officer of police " for " superintendent of police."*

We, in common with a great number of other solicitors, have been making applications for grants of new licences and removals at the annual licensing sessions and followed the practice which was in force for very many years past of giving notice to the clerk of the justices, to the superintendent of police, to the chairman of the local authority, and advertising the notice in the press. Quite obviously, the reason behind these notices always has been to make the fact of the application known locally.

We have, in fact, had a licence granted by the justices of licensing sessions held on February 1. The justices' adjourned sessions will be held on March 1. It is not now possible to give twenty-one days' notice before the application to the chief constable, although a notice has been given to the superintendent of police.

Looking at it broadly, one would have thought that a notice to the superintendent of police for the district would be to him as agent to the chief constable and, in fact, the superintendent invariably hands the notices to the chief constable on receipt of same and asks for instructions thereon.

We find that quite a large number of solicitors up and down the country have acted in exactly the same way as we acted in this matter.

NONDUM.

Answer.

It was to make the provisions of licensing law consistent with other modern enactments that the Licensing Act, 1953, required that notices directed to the police shall be served on the chief officer rather than on an officer of subordinate rank. Indeed, there is justification for the view that the meaning to be applied to the expression " superintendent of police " as originally enacted related not to the officer who in modern police nomenclature holds the rank so described, but to " a head constable who had the superintendence within his own district, and one would naturally call him a superintendent " (per Pollock, B., in *R.* v. *Birley and others, Lancashire JJ.* (1891) 55 J.P. 88). Thus, it seems that the new law makes no real change, but merely re-enacts in modern language what was always the true construction of the law. In our opinion, if the chief officer of police accepts the notice addressed to the " superintendent of police " as a notice designed for him and properly served upon him, the licensing justices may act upon it as a good notice. If they have doubts about following this advice, we think that they may safely have recourse to the procedure set out in s. 29 of the Licensing Act, 1953, which, in our opinion, was designed for such a situation as this—supposing that we are wrong in the view we have expressed.

8.—Probation—*Case committee—Member of committee also a member of court dealing further with probationer—Bias.*

Members of the Probation (Case) Committee hear reports periodically from probation officers where there is need of some action being taken to bring the probationer before the court. These justices advise the probation officer in question to take out process to bring the probationer before the court. It has been the custom, long before my time as clerk, for the same justices to deal with the case when it is before the court. I have advised against this on the question of bias, apart from the fact that justice " must . . . be seen to be done ".

I would like your opinion thereon.

SEEN.

Answer.

The case committee is not responsible under the Rules for causing proceedings to be taken, and it might be said that there is no disqualification in this case. Nevertheless, we think our learned correspondent has given sound advice and that it is desirable that a member of a case committee should not adjudicate if he has been receiving reports about the probationer and giving advice to the probation officer about the steps to be taken. If by chance he has seen the probationer in connexion with the progress of the probation, that would make still stronger the undesirability of his sitting when the case comes again before the court.

9.—Tort—*Detention of habitable boat by former lessee—Remedies.*

Our client is the owner of a houseboat, which is moored on the foreshore of a tidal inlet below high water mark level. He pays the owner of the foreshore an annual sum for the use of so many feet of foreshore in which to moor the boat. The boat is in a sea-worthy condition and is surrounded by water at high tide, but entry can still then be obtained by a gangplank from the bank. The boat is fitted out for the purpose of permanent residence, having a bathroom and cooking and heating apparatus. He has " let " it for a weekly sum of £2 0*s.* 0*d.* The occupant has fallen into arrear with the payments and states that he cannot afford to continue making them. He has a wife and one child and is adopting the attitude that he cannot be made to leave without a court order. Our client has given him a week's notice in writing, expiring on the " rent " day to " vacate and give up possession " of the boat. This has not been complied with and our client wishes to obtain possession as soon as possible, as no further rent seems likely to be forthcoming and any arrears which accumulate will, in all probability, have to be written off.

We should be grateful if you could advise us on the following points :

(*a*) Provided he can do so peaceably, is the owner justified in removing the occupants' furniture to the bank and then locking them out ?

(*b*) Is he justified in taking other steps to " encourage " them to leave ; for instance, by removing the float which supports the gangplank at high tide, or by mooring the boat further away from the bank ?

(*c*) If court proceedings are necessary, what form should they take ; and would the fact that the boat is worth more than £200 exclude the county court from jurisdiction ?

BEAMEND.

Answer.

(*a*) Yes. The occupant is apparently misled by a false analogy with a rent restricted house.

(*b*) We think so, although, if the boat were moved at a time when the occupant and/or the family were on board, we think an argument could be constructed to show there was an assault. This need not, however, be regarded as a reason for not doing this.

(*c*) Not in our opinion necessary, and not in fact desirable, because of the delay and expense (it may be difficult to get costs paid by this defendant). It taken, proceedings will be in detinue, and must be in the High Court, for the reason given.

OFFICIAL AND CLASSIFIED ADVERTISEMENTS, ETC. (*contd.*)

STAFFORDSHIRE MAGISTRATES' COURTS COMMITTEE

Lichfield City Division and Aldridge and Rushall, Lichfield and Brownhills, and Tamworth Petty Sessional Divisions

1. **First Assistant to Justices' Clerk.**
2. **Second Assistant to Justices' Clerk.**

APPLICATIONS are invited for the above whole-time appointments.

First Assistant

Preference will be given to candidates who are competent typists, with experience of issuing process and keeping fines and fees accounts—salary £610 per annum.

The successful candidate will be employed mainly in the Justices' Clerk's Office at Aldridge.

Second Assistant

Candidates should be competent typists and preference may be given to those with previous experience in a Justices' Clerk's Office—salary £490 per annum.

The successful candidate will be employed in the Justices' Clerk's Offices at Lichfield and Tamworth.

Both the above appointments are superannuable and subject to one month's notice on either side. The successful candidates will be required to pass a medical examination. Canvassing will disqualify.

Applications, giving age, present duties and previous experience, with copies of two recent testimonials, to be sent to Mr. P. J. C. Tench, Clerk to the Justices, 24, Bird Street, Lichfield, to reach him by March 13, 1954.

T. H. EVANS,
Clerk of the Magistrates' Courts Committee.

County Buildings,
Stafford.

LANCASHIRE MAGISTRATES' COURTS COMMITTEE

Burnley Petty Sessional Division

APPLICATIONS are invited for the appointment of an experienced Magisterial Assistant at a salary scale of £495 rising by annual increments to £540. The appointment will be superannuable and subject to a medical examination. Applications to be sent to the undersigned not later than March 15, 1954.

GUY SOUTHERN,
Clerk to the Justices.

Martins Bank Chambers,
Burnley.

COUNTY BOROUGH OF BLACKPOOL

Appointment of Prosecuting Solicitor in the Department of the Town Clerk

APPLICATIONS are invited for the superannuable appointment of Prosecuting Solicitor in the Department of the Town Clerk, at a salary in accordance with A.P.T. Grade VII —(£735—£810 per annum) of the National Scale of Salaries (A.P.T. Grade V (a)—(£650—£710 per annum) during the first two years of professional experience after admission). Experience and qualifications will be taken into account in fixing the commencing salary within the Grade.

Duties of the successful applicant will be mainly concerned with the conduct of Court and other legal proceedings on behalf of the Corporation and the Chief Constable, and Conveyancing.

Candidates must be capable advocates. Municipal experience, though desirable, is not essential.

Further particulars, conditions of appointment and form of application, may be obtained from the undersigned.

Completed forms of application should reach me on or before March 20, 1954.

TREVOR T. JONES,
Town Clerk.

CITY OF PLYMOUTH MAGISTRATES' COURTS COMMITTEE

Appointment of Joint Second Assistant

APPLICATIONS are invited for above appointment. It is essential that applicants should possess considerable experience and be fully competent to act in Court without supervision, if called upon.

Commencing salary will be fixed between £555 and £585 according to experience, and thereafter will be in accordance with Grade V of A.P. & T. Division of the National Joint Council Scales. Appointment will be superannuable and the successful applicant will be required to pass a medical examination.

Applications, stating age, present position and experience, together with copies of three recent testimonials, should be sent to the undersigned not later than March 22, 1954.

EDWARD FAULKES,
Clerk to Magistrates' Courts Committee.

Greenbank,
Plymouth.

STAFFORDSHIRE COMBINED PROBATION AREAS

Appointment of Full-time Male Probation Officer

APPLICATIONS are invited for the appointment of a Full-time Male Probation Officer in the area of the Staffordshire Combined Probation Committee.

The appointment will be subject to the Probation Rules and the salary will be in accordance with the Rules together with a travelling allowance. The Salary will be subject to superannuation deductions and the selected candidate will be required to pass a medical examination.

Applications, stating age, qualifications and experience, and accompanied by copies of not more than three recent testimonials, must reach the undersigned not later than Saturday, March 20, 1954.

T. H. EVANS,
Clerk of the Peace.

County Buildings,
Stafford.
March 2, 1954.

BOROUGH OF WIMBLEDON

Appointment of Town Clerk

APPLICATIONS are invited from Solicitors having considerable Local Government experience for the appointment of Town Clerk from October 1, 1954.

The commencing salary will be £1,750 per annum rising by annual increments of £50 to £2,000 per annum. The Recommendations regarding Salary and Conditions of Service of the Joint Negotiating Committee for Town Clerks will apply to the appointment. The Town Clerk is Registration Officer and Acting Returning Officer for the Wimbledon Constituency. The appointment is subject to medical examination and to termination by three months' notice.

Applications, giving particulars of age, qualifications and experience, with the names and addresses of two persons to whom reference can be made, must reach the undersigned not later than first post on Monday, April 12, 1954.

EDWIN M. NEAVE,
Town Clerk.

Town Hall,
Wimbledon, S.W.19.
February 25, 1954.

REGISTER OF LAND AND ESTATE AGENTS, AUCTIONEERS, VALUERS AND SURVEYORS

CHESHIRE

CHESTER—HARPER, WEBB & CO., Chartered Surveyors, Rating Specialists, 35 White Friars, Chester. Tel. 20685.

DEVON

EXETER—RIPPON, BOSWELL & CO., F.A.I., 8 Queen Street, Exeter. Est. 1884. Tels. 3204 and 3592.

ESSEX

ILFORD AND ALL ESSEX.—RANDALLS, Chartered Surveyors, Auctioneers, Valuers, 1 Medway Parade, Cranbrook Rd., Ilford. Est. 1884. Tel. ILFord 2201 (3 lines).

GLOUCESTERSHIRE

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